

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
 FOR THE COUNTY OF YAVAPAI

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STATE OF ARIZONA,

Plaintiff,

vs.

JAMES ARTHUR RAY,

Defendant.

Case No. V1300CR201080049

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
 BEFORE THE HONORABLE WARREN R. DARROW

TRIAL DAY FORTY-EIGHT

JUNE 1, 2011

Camp Verde, Arizona

**ORIGINAL**

REPORTED BY  
 MINA G. HUNT  
 AZ CR NO. 50619  
 CA CSR NO. 8335

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
2 FOR THE COUNTY OF YAVAPAI  
3

4 STATE OF ARIZONA, )  
5 Plaintiff, )  
6 vs. ) Case No. V1300CR201080049  
7 JAMES ARTHUR RAY, )  
8 Defendant. )  
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12  
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4  
1 Proceedings had before the Honorable  
2 WARREN R. DARROW, Judge, taken on Wednesday,  
3 June 1, 2011, at Yavapai County Superior Court,  
4 Division Pro Tem B, 2840 North Commonwealth Drive,  
5 Camp Verde, Arizona, before Mina G. Hunt, Certified  
6 Reporter within and for the State of Arizona.  
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## PROCEEDINGS

(Proceedings continued outside presence of jury.)

THE COURT: On the record in State versus James Arthur Ray. Mr. Ray is present with his attorneys, Mr. Kelly, Mr. Li and Ms. Do. Ms. Polk and Mr. Hughes are here on behalf of the state. I see Mr. Launders, who is appointed especially to consult with Mr. Rock.

MR. LAUNDERS: Thank you, Your Honor. Can I sit back here?

THE COURT: You know, I'd just as soon that you sit close.

MR. LAUNDERS: Thank you.

THE COURT: And I have received this morning two documents -- a petition for use immunity relating to Mr. Rock under 13-4064, and then a request from the state -- I mean from the defense. It's the defendant's request for in-camera review, motion to strike testimony of Mark Rock.

Mr. Hughes or Ms. Polk, have you seen this document?

MS. POLK: We have, Your Honor.

THE COURT: Would you respond, please.

MS. POLK: Your Honor, a couple of things

first. The state has filed a petition for use immunity. The Court indicated you have received it. We would request that the Court sign it.

The second issue just real quick is the issue of time. And we've only had a chance to briefly review what was filed by the defense. And I did respond on a couple of issues.

But I would like the Court to know that we have four witnesses lined up for the week, including Mr. Rock. We lost half of the day on Friday. And depending on what happens today, I just want the Court to be aware that time is of the essence for the state if we are to complete on Friday.

Having said that, Your Honor, again, I've only just briefly had the chance to review what the defense has filed and had a chance to look at some of the ethical rules as well as look at the Hamilton case that they cite. I see this as a multifaceted issue.

First of all, Mr. Launders filed with the Court a sealed document. It's not clear to me that it is an affidavit. The defense refers to it as an affidavit in the pleading. I'm not sure what it is. But it's sealed.

And in Mr. Launders own words at the hearing yesterday, the telephonic hearing, Mr. Launders indicated, I can tell you that what I've given the Court in the sealed document is solely to protect my interest in the event this goes in the way I think it could very well go and Mr. Rock down the road blames me for somehow giving him bad advice.

And then, further, on page 11, Mr. Launders indicates that he makes a statement: Mr. Rock, as I've previously told you -- this is his advice to Mr. Rock on the record: The use immunity that everybody acknowledges that you're going to receive is intended to give you protection from prosecution from some of the things that you might say. But you do understand that it does not and it cannot protect you from perjury if it's determined that you've committed perjury on the witness stand.

And that advice, Your Honor, is completely consistent with A.R.S. Section 13-4064, which does not allow the Court to give a witness immunity in advance of taking the stand.

Obviously it's in the state's interest as well as the defendant's interest that this witness

tell the truth on the stand. And the state has not offered nor would we ever offer immunity for perjury on the stand. Nor does the statute allow the Court to grant such immunity. And that's consistent with what Mr. Launders had advised his client.

Just briefly responding to the request from the defense that the Court review the Launders statement in camera to determine whether Mr. Rock's testimony rests on perjury or contains Brady information. The information -- the Court indicated the Court has not looked at it and that you don't intend to look at it.

I haven't had a chance to review the canons, but it's not clear to me that the Court would have authority to look at the information ex parte in any event.

And, secondly, should the Court look at it, it's not clear what you would do with the information. It is attorney-client privileged. And I'll address that in a minute. But it also -- just for the sake of argument, even if the Court determined that it was exculpatory information, what would the Court do with the information at that point?

1 Would the Court then proceed to violate  
2 the client's attorney-client privilege and disclose  
3 it to the parties? Would -- and, again,  
4 Your Honor, just looking at the Hamilton case which  
5 the defense cited, that seems to address the issue  
6 that the -- any statement filed by an attorney with  
7 the Court is hearsay and cannot be used because of  
8 the confrontation issue anyway.

9 That's the first part of the analysis is  
10 that it would be an ex parte communication to the  
11 Court. And it's just not clear to the state what  
12 would happen next and what the defendant is  
13 suggesting would happen next.

14 Secondly, this is an attorney/client  
15 privilege. Ethical Rule 1.6(c) allows Mr. Rock's  
16 attorney to reveal the intention of a lawyer's  
17 client to commit a crime and the information  
18 necessary to prevent the crime.

19 In other words, on the issue of  
20 attorney-client privilege and the confidentiality,  
21 an attorney can violate that confidentiality in  
22 order to reveal the intention of the lawyer's  
23 client to commit a crime and that information  
24 necessary.

25 Mr. Launders has not done that and has

1 not indicated that that is the issue. He, as I  
2 read to the Court, simply indicated to the Court  
3 that he was filing the information with the Court  
4 to protect his own interests should Mr. Rock down  
5 the line want to blame Mr. Launders for something.

6 I don't see any authority that allows the  
7 attorneys or the Court to violate Mr. Rock's  
8 attorney-client privilege outside of this  
9 provision. And, again, this provision has not been  
10 exercised by Mr. Launders.

11 So it's just not clear to me that this  
12 court or the attorneys would have the authority to  
13 proceed under the ethical rules or the canons to  
14 look at something that Mr. Launders has clearly  
15 indicated is attorney-client confidences or advice  
16 he has provided to his client.

17 Your Honor, in the defendant's motion  
18 they made the representation to the Court that this  
19 could, in any event, never be harmless error  
20 because Mr. Rock is the only person inside the tent  
21 who has testified as to information relating to the  
22 fact that Kirby was in trouble and that Mr. Ray  
23 himself heard it and responded.

24 That's simply not true. There are four  
25 other witnesses who have already testified to that

1 effect. Dawn Gordon the state anticipates will  
2 testify as to that information. And Mark Rock has  
3 already testified to that.

4 Specifically Melissa Phillips's testimony  
5 that she laid down at the 2:00 o'clock position  
6 with her face turned toward Kirby Brown. She noted  
7 the distress of Kirby Brown and called out five to  
8 six times that there was something wrong with Kirby  
9 and she needed to be taken out.

10 Ms. Phillips testified that she called  
11 out to the defendant loud enough for him to hear  
12 and that someone responded that she's fine. And  
13 Ms. Phillips testified she did not recognize the  
14 voice.

15 Dr. Beverly Bunn testified that around  
16 round 6 or 7 she heard a voice say, I can't get her  
17 to -- someone's not breathing.

18 She heard the defendant respond, the door  
19 is closed. This round has begun. We'll deal with  
20 it at the end of the next round.

21 Laurie Gennari testified that she sat at  
22 the 9:00 o'clock position and that she heard a  
23 voice call out from the 1:00 to 2:00 o'clock  
24 position before the last round, she's not  
25 responding. And at another time she heard a

1 statement, she's not breathing.

2 Ms. Gennari testified she heard the  
3 defendant respond, leave her there. We'll deal  
4 with it at the end of the round.

5 And then Dr. Nell Wagoner, the  
6 gynecologist from Alaska, testified that she was at  
7 the 5:00 o'clock position very close in position to  
8 the defendant. She testified that around the  
9 middle rounds when the flap was down, she heard  
10 someone say, wait. There is one more. And she  
11 testified she sat just a few feet from the  
12 defendant and heard him reply, they'll have to wait  
13 until the next round.

14 The state anticipates that Dawn Gordon,  
15 who will testify this week, will have similar  
16 testimony. And, again, the Court's already heard  
17 the testimony of Mark Rock.

18 That's just a brief analysis, Your Honor,  
19 as what the state sees as the issues, just having  
20 the brief amount of time to review it.

21 But the final position, the bottom line,  
22 Your Honor, is that nobody wants this witness to  
23 perjure himself. The state would never offer  
24 immunity to a witness in advance protecting himself  
25 from his testimony on the stand. And the statute

1 does not allow this court to grant such immunity.  
 2 And the immunity that the state has offered is the  
 3 use immunity for the statements themselves.

4 THE COURT: Thank you.

5 Mr. Kelly.

6 MR. KELLY: Judge, first of all, I trust that  
 7 you had at least a brief opportunity to review the  
 8 brief filed by Ms. Seifter?

9 THE COURT: I did read it.

10 MR. KELLY: As she indicates, this is  
 11 black-letter law. I attempted to raise this issue  
 12 at 1:30 yesterday afternoon. And I see it solely  
 13 as a due-process evaluation that Mr. Ray enjoys.  
 14 That's the dilemma presented by this particular  
 15 witness's testimony.

16 I suppose, listening to the government's  
 17 argument, that she would concede that as to point 3  
 18 under the Nappu case that the false testimony is  
 19 material. That's what we're talking about. We're  
 20 not talking about some irrelevant or immaterial  
 21 testimony. But given the government's argument,  
 22 clearly she argues that it's material testimony.  
 23 So that aspect of the test is sewn up.

24 Then the question is whether or not the  
 25 government should know the testimony was actually

14

1 false. And, of course, in that regard we have the  
 2 representations of Mr. Launders.

3 So the first question, Judge, for the  
 4 government, for the State of Arizona is -- I would  
 5 submit is do you believe after listening to  
 6 Mr. Rock, reviewing all the exhibits in this  
 7 particular case, reviewing all the interviews  
 8 disclosed, gathered and disclosed, by the State of  
 9 Arizona, and the legal opinion of Mr. Launders,  
 10 does the government in any construct believe that  
 11 the testimony may be false? That's the question I  
 12 would pose to our elected county attorney.

13 If the answer is yes, Judge, I guess it's  
 14 just beyond comprehension how the government could  
 15 continue down a path arguing for the presentation  
 16 of this testimony.

17 And I rely on this pleading because I  
 18 believe it's very well drafted. It's brief. It's  
 19 succinct. It's to the point.

20 And what we're talking about is a  
 21 due-process consideration of Mr. Ray and nothing  
 22 else. Stated in more simple terms, would the State  
 23 of Arizona be willing to obtain a conviction based  
 24 on false testimony?

25 Secondly, Judge, with all candor to the

1 Court, would the Yavapai County Superior Court  
 2 accept testimony that's not true offered by the  
 3 State of Arizona in an effort to obtain a  
 4 conviction?

5 Those are very serious questions. And  
 6 they do affect the very foundation of an  
 7 individual's due process rights under the  
 8 United States and Arizona Constitutions.

9 Before we can get to a meaningful  
 10 discussion as to the -- an assessment as to the  
 11 credibility of Mr. Rock's testimony, we believe  
 12 it's simply necessary for you to take a look at the  
 13 materials filed by Mr. Launders.

14 I disagree. And we cite the ethical rule  
 15 that Mr. Launders complied with it a hundred  
 16 percent. And it says that you submit this issue to  
 17 the tribunal.

18 Now, if there is some concern that this  
 19 court has in regards to continuing with a trial in  
 20 a fair and impartial manner after reading that  
 21 information, which I don't believe there is, Judge,  
 22 we have no objection to your review of  
 23 Mr. Launders's information. We have no objection  
 24 as long as it's on the record and sealed of your  
 25 interview of Mr. Launders in chambers ex parte. We

16

1 have no objection.

2 But if somehow you felt uncomfortable  
 3 after listening to Ms. Polk's argument, the remedy  
 4 is that this information would be submitted to the  
 5 presiding judge of Yavapai County to make that  
 6 determination.

7 In addition to this serious concern  
 8 regarding obtaining a conviction based on a lie or  
 9 false evidence, there is a related concern that  
 10 there may be some material which is exculpatory.  
 11 And contrary to what the state says, is that you  
 12 would never obtain a valid conviction in the state  
 13 of Arizona if in the possession of the Yavapai  
 14 County Superior Court or in the state of Arizona,  
 15 the State of Arizona, either one of those two  
 16 entities, would have in its possession exculpatory  
 17 evidence which could show that Mr. Ray is not  
 18 guilty of a crime. That does not make sense.

19 Judge, I just have so many things going  
 20 through my mind. And I have to emphasize this  
 21 argument from the state that there is a time  
 22 problem. The first time that you and I were aware  
 23 of this problem was approximately a quarter to  
 24 12:00 last Friday. The first time we heard of  
 25 Mr. Launders's concern was 1:30 yesterday

1 afternoon.

2 And I would simply state the time  
3 considerations in any trial do not trump the  
4 due-process rights of someone facing an indictment  
5 with extremely serious charges.

6 I had a final thought, Judge. And it  
7 just points out the seriousness of this problem.  
8 Let's assume for a moment that we're going to  
9 accept the state's argument that Mr. Rock can  
10 simply testify based on use immunity. In other  
11 words, we don't know whether Mr. Launders, when he  
12 made the statement, my client is determined to  
13 commit perjury -- we don't know whether that is  
14 referencing the November 16, 2010, sworn testimony  
15 of Mr. Rock or whether it referenced June 1, 2011,  
16 sworn testimony of Mr. Rock. We simply don't know.

17 But Mr. Launders is an experienced member  
18 of the bar who I would, for the record, mention has  
19 served both as a prosecutor and a defense attorney.  
20 I believe he's acutely aware of his ethical  
21 responsibilities. And that's a very strong  
22 statement.

23 So assume in my hypothetical for a  
24 moment, Judge, that Mr. Rock is allowed to testify.  
25 He's cross-examined. And during the

1 cross-examination we point out, or I point out,  
2 this false testimony, or I point out and it's clear  
3 from the responses of the witness that he provided  
4 false information to the police back on October 8  
5 and during later days in October of 2009. Assume  
6 that hypothetical.

7 Then is the State of Arizona in redirect  
8 going to get up and attempt to rehabilitate a  
9 witness who has lied under oath? That, Judge,  
10 presents additional concerns, very serious  
11 concerns, relating more towards malicious  
12 prosecution than a witness.

13 We trust our elected county attorney not  
14 to obtain a conviction based on false evidence.  
15 And that's why both -- and we have the transcript  
16 from the beginning of the sidebar conference when  
17 Ms. Polk -- again, I'm kind of paraphrasing. My  
18 understanding is it was kind of a casual remark by  
19 Mr. Rock in passing in the hallway. And then she  
20 was kind enough to approach the bench.

21 And the first thing in the transcript out  
22 of my mouth is well, this is perjury. He's either  
23 lying then or he's lying now. There is a problem  
24 here. It's very serious consideration. And we  
25 appreciate the break in these proceedings to ferret

1 out issues relating to that. Because I just trust  
2 that the State of Arizona does not want to obtain a  
3 conviction based on false evidence. That would  
4 just flat be wrong.

5 And I know this court is not going to  
6 allow that. And all we're requesting at this time,  
7 Judge, is for you to be more educated on the issue  
8 by reviewing Mr. Launders's statement or,  
9 alternatively, interviewing Mr. Launders in private  
10 such that any concern regarding attorney/client  
11 privilege can be protected.

12 We talked about protected. We talked  
13 about protected from the State of Arizona. We have  
14 no authority to prosecute anyone. Only the State  
15 of Arizona does.

16 And that kind of begs the question, what  
17 prejudice is there to the State of Arizona to allow  
18 you to become more educated on this very serious  
19 issue before this man testifies? Now, we believe,  
20 Judge, based on our review of all the evidence in  
21 this case and Mr. Rock's testimony, that his  
22 testimony is perjured and it should be stricken. I  
23 believe that argument cannot be made until you're  
24 better apprised of all the facts relating to the  
25 serious issue.

1 Finally, Judge, I would -- I just have to  
2 mention that -- and we have a transcript from  
3 Friday's oral argument advanced by Ms. Polk.  
4 Imagine if we would accept her argument last Friday  
5 that we should proceed given the inquiry by  
6 Mr. Launders, given now the state's grant of use  
7 immunity. Then what would have happened is we  
8 collectively would have violated Mr. Ray's  
9 due-process rights.

10 And we're asking today is that you become  
11 better apprised of this most serious issue before  
12 we take the next step, which is a determination as  
13 to whether we allow Mr. Rock to testify at all, or  
14 under what conditions his testimony would take  
15 place.

16 THE COURT: Thank you.

17 Ms. Polk, I had you respond first because  
18 I had this motion. That's how I got things  
19 started. Mr. Kelly brought up some additional  
20 points. I want to talk to Mr. Launders. Did you  
21 have anything else right now?

22 MS. POLK: Your Honor, just briefly, that  
23 Mr. Kelly made the statement that Mr. Launders had  
24 told the Court my client is determined to commit  
25 perjury. I did not hear that statement from

1 Mr. Launders. And when I look at the record,  
2 that's not reflected in the record.

3 An attorney who believes that his client  
4 is intending to commit a crime, under Ethical  
5 Rule 1.6 can reveal that to the Court. And that  
6 has not occurred. Again, what I read to the Court,  
7 Mr. Launders submitted something to the Court, in  
8 his words, to protect his own interests.

9 I have not seen any evidence that  
10 Mr. Launders is proceeding under 1.6(c), revealing  
11 to the Court the intention of a client to commit a  
12 crime. And certainly if Mr. Launders believes  
13 that's occurring, he can proceed in that fashion.

14 My concern, Your Honor, is that the  
15 attorney-client privilege is not to be invaded  
16 casually. And I see nothing in the pleading filed  
17 by the defense -- none of those cases allow the  
18 Court to invade that attorney-client privilege  
19 under the conditions suggested by the defense.

20 The -- and ultimately the issue is that  
21 the Court and the state have not given Mr. Rock  
22 immunity against perjury. It is in everybody's  
23 interest that he testify truthfully.

24 MR. KELLY: Judge, very briefly. It's  
25 page 10, lines 15 and 16, 1:52 p.m., that the

1 statement by Mr. Launders was: But it does not  
2 encompass someone who is determined to perjure  
3 themselves.

4 The entire paragraph is: Let me  
5 interject one thing for my client, who doesn't want  
6 to listen to his lawyer's advice. The use immunity  
7 does not cover a witness who somebody figures has  
8 perjured themselves. That's a glaring omission in  
9 everything that everybody has said thus far. The  
10 use immunity that the state can provide this  
11 witness compasses a great deal, but it does not  
12 encompass someone who is determined to perjure  
13 themselves.

14 Clearly, Judge, my interpretation is  
15 Mr. Launders was referring to Mr. Rock, his client,  
16 during that representation to the Court.

17 THE COURT: Mr. Launders, if you feel there is  
18 something you can add, I'd like you to do that. I  
19 have some questions for you, at least one, anyway.

20 MR. LAUNDERS: I have nothing to add. I have  
21 no objection to you looking at that document. I  
22 had no objection to you looking at it to begin  
23 with.

24 THE COURT: I realize that, Mr. Launders. As  
25 a matter of fact, the suggestion was to make a

1 record with just me and you and court personnel. I  
2 declined and said, file something, and I'll seal  
3 that.

4 MR. LAUNDERS: Yes, sir.

5 THE COURT: I want to ask you this: And I  
6 think this is an appropriate question. If you  
7 disagree, Mr. Launders, obviously think about it,  
8 and you can tell me that.

9 You had a copy, it appears, of the  
10 defense motion there?

11 MR. LAUNDERS: I do, sir.

12 THE COURT: On page 5 there is reference to  
13 the Ethical Rule 3.3(b). And Ms. Polk in her  
14 response a short time ago also mentioned 1.6(c),  
15 those two rules. If you can answer this. Is the  
16 document you were providing me -- was it pursuant  
17 to or related in any way to those ethical rules?

18 MR. LAUNDERS: No, sir.

19 THE COURT: Okay.

20 MR. LAUNDERS: I don't know how much clearer I  
21 can say it. No.

22 THE COURT: You said it very clearly. I said  
23 the rules. I think that's the rule that applies  
24 most directly to this very difficult situation.

25 Mr. Kelly, I can assure you I'm not going

1 to put time concern over issues of -- that are  
2 significant. I would not do that.

3 Given Mr. Launders's statement here  
4 that -- I have to go with what Mr. Launders said.  
5 It did not relate to those types of concerns and a  
6 concern that there is impending perjury, a crime of  
7 some sort.

8 With regard to the Brady issue coming up  
9 with the witness, not something the state knows,  
10 that's just something that I'm not going to deal  
11 with at this time. You've certainly made a  
12 thorough record on that.

13 I do intend to proceed with Mr. Rock.  
14 Mr. Li mentioned the content of order for use  
15 immunity. This is typically the type of order I  
16 see.

17 Mr. Kelly or Mr. Li, if somebody would  
18 address that, the proposed order by the state.

19 MR. KELLY: Judge, before we go to that point,  
20 then, is it your ruling that you're not going to  
21 look at the sealed information?

22 THE COURT: I am not going to look at the  
23 sealed information.

24 MR. KELLY: Judge, I would request a brief  
25 recess in these proceedings. I believe the defense

1 team has a significant decision to make before  
2 Mr. Rock's testimony continues.

3 THE COURT: Mr. Kelly, I know -- you made a  
4 very thorough record. Ms. Polk, Mr. Hughes, has  
5 considered this. And given what Mr. Launders just  
6 indicated regarding the nature of the statement --

7 I'm assuming, Mr. Launders, it's a fairly  
8 brief statement, if you can even characterize it as  
9 that. It's your statement. It's not in affidavit  
10 form, I think. But I don't know. Could you just  
11 tell me mechanically.

12 MR. LAUNDERS: Your Honor, I prepared a  
13 handwritten document that is probably two thirds of  
14 the page that contained what I thought was the  
15 advice I'd given Mr. Rock for the sole reason it  
16 would be a record somewhere down the road if it's  
17 determined that I had given him bad advice.

18 It contains nothing from Mr. Rock. He  
19 didn't sign it. He never saw it. It's completely  
20 my document. It contains no information provided  
21 to you by my client.

22 THE COURT: Then, yes. I'm not going to be  
23 reviewing the document at this time.

24 Mr. Kelly.

25 MR. KELLY: Thank you, Judge. And finally,

1 Judge, I move to strike Mr. Rock's testimony. We  
2 would request from this court an instruction to the  
3 jury after striking his testimony as to the reason  
4 why.

5 THE COURT: Ms. Polk, response to the motion  
6 to strike.

7 MS. POLK: Your Honor, the state requests the  
8 Court deny the motion.

9 THE COURT: The motion is denied. I'm going  
10 to sign the order of use immunity.

11 MR. LAUNDERS: Your Honor, could I inquire of  
12 a logistical matter, from my perspective? Given  
13 where this case is now with the witness going to be  
14 called, is there something in particular you want  
15 this lawyer to do during his testimony?

16 THE COURT: I believe from what you told me  
17 that you have covered what you were asked to do.

18 MR. LAUNDERS: I was hoping I didn't have to  
19 stand up there and tell him at the end of each  
20 question that he should assert his rights.

21 THE COURT: You've done what I've asked you to  
22 do, Mr. Launders. If you feel there is something  
23 further that's --

24 MR. LAUNDERS: I do not.

25 THE COURT: That would be your decision.

1 I have signed the order.

2 Counsel, we'll take a few minutes before  
3 we get started, Mr. Kelly.

4 Ms. Polk.

5 MS. POLK: Your Honor, the question I have for  
6 Mr. Launders, and I don't know that he was able to  
7 respond, is does he continue to represent Mr. Rock?

8 THE COURT: And I indicated, as far as I'm  
9 concerned, no. I think he's served his function.

10 MS. POLK: So he is withdrawn?

11 MR. LAUNDERS: Beyond -- I guess it's my  
12 obligation to give him a copy of the petition that  
13 I got unless someone else is going to tell him.

14 THE COURT: True. In terms of -- you were  
15 asking about being here and advising and during  
16 testimony, no. I asked you to advise him  
17 concerning potential legal effects of his  
18 testimony, discuss the use immunity. That  
19 developed. And when you complete that, that's what  
20 I appointed you to do.

21 MR. LAUNDERS: Thank you, Your Honor.

22 (Recess.)

23 (Proceedings continued in the presence of  
24 jury.)

25 THE COURT: The record will show the presence

1 of the defendant, Mr. Ray; the attorneys, the jury.

2 Good morning.

3 Mr. Rock has returned to the stand.

4 And, of course, you're still under oath.

5 You understand that?

6 THE WITNESS: Yes.

7 THE COURT: Ms. Polk, when your ready.

8 MS. POLK: Thank you, Your Honor.

9 DIRECT EXAMINATION (Continued)

10 BY MS. POLK:

11 Q. Good morning, Mr. Rock.

12 A. **Good morning.**

13 Q. Do you recall last week when we took a  
14 break in this trial?

15 A. **Yes, I do.**

16 Q. Do you recall that because of some  
17 inconsistencies between your testimony here at  
18 trial and some earlier statement you'd given to law  
19 enforcement that the Judge appointed an attorney  
20 for you?

21 A. **Yes.**

22 Q. Have you had a chance to talk to that  
23 attorney?

24 A. **Yes, I have.**

25 Q. And do you understand that the state

1 petitioned the Court for a grant of use immunity  
2 for the testimony?

3 **A. Yes.**

4 **Q.** And do you understand --

5 MR. KELLY: Your Honor, object to the leading  
6 questions.

7 THE COURT: Overruled.

8 **Q.** BY MS. POLK: And, Mr. Rock, have you  
9 received use immunity from this court for your  
10 testimony here today?

11 **A. Yes, I have.**

12 **Q.** And, Mr. Rock, I'm going to show you  
13 what's admitted as 1069.

14 **A. Okay.**

15 **Q.** Do you recognize that as the order of use  
16 immunity for your testimony?

17 **A. Yes. I don't have a signed copy, but I**  
18 **have a copy.**

19 MR. KELLY: Judge, I apologize. I didn't get  
20 the exhibit number.

21 MS. POLK: 1069.

22 Your Honor, I move for the admission of  
23 Exhibit 1069.

24 THE COURT: Mr. Kelly?

25 MR. KELLY: No objection.

1 THE COURT: 1069 is admitted.

2 (Exhibit 1069 admitted.)

3 **Q.** BY MS. POLK: Mr. Rock, do you understand  
4 that you can be prosecuting for failing to testify  
5 truthfully at this hearing?

6 MR. KELLY: Your Honor, I'm going to object.  
7 Leading question.

8 THE COURT: Overruled.

9 THE WITNESS: Yes, I do.

10 **Q.** BY MS. POLK: I want to talk, sir, about  
11 your interviews with law enforcement. First of  
12 all, do you recall when it was that you were first  
13 interviewed by law enforcement, going back to the  
14 events of October of 2009?

15 **A. The first time was on October 8, the day**  
16 **of the sweat lodge. And it was in the evening,**  
17 **later in the evening.**

18 **Q.** Do you recall the second time that you  
19 were interviewed?

20 **A. I recall I got a phone call from a police**  
21 **officer. He said he was a police officer. I think**  
22 **that I called him back -- I don't know -- just to**  
23 **verify that. I can't remember. And I don't know**  
24 **exactly when that was.**

25 **Q.** Do you recall how close in time that was

1 to the first, to October 8?

2 **A. No, I don't.**

3 MR. KELLY: Your Honor, we'd stipulate it was  
4 October 29, 2009.

5 THE COURT: Ms. Polk?

6 MS. POLK: Thank you.

7 THE COURT: Okay. The stipulation is  
8 accepted.

9 **Q.** BY MS. POLK: Mr. Rock, will you tell the  
10 jury, did this event -- did what happened in the  
11 sweat lodge on October 8, 2009, impact you?

12 **A. How it impacted me?**

13 **Q.** Yes.

14 **A. This has been the most traumatic -- this**  
15 **has altered my life --**

16 MR. KELLY: Judge, object based on relevance  
17 and 403. If it impacts his testimony, fine.

18 THE COURT: Sustained.

19 **Q.** BY MS. POLK: Let me ask you this: Did  
20 the -- what happened in the sweat lodge impact the  
21 statements that you made to law enforcement?

22 **A. Yes. Because I was altered in some way.**

23 **Q.** And will you explain that to the jury.

24 **A. When I was in the sweat lodge, I became**  
25 **in an altered state because of the heat and**

1 **everything that happened. And then when I came out**  
2 **and I was responding to what was happening in such**  
3 **a strange way, as I said, with James Shore looking**  
4 **at him and saying, oh, he's dead.**

5 **I mean, that's not normal. Wandering**  
6 **around, looking at people laying there, taking a**  
7 **towel, putting it on myself and then walking around**  
8 **and giving it to somebody who is shivering and then**  
9 **wondering afterwards why didn't I just take a bunch**  
10 **of towels and give them to people.**

11 **I was in shock. I was afraid. I was**  
12 **every emotion that you could possibly feel when I**  
13 **came out of that sweat lodge and experienced what**  
14 **happened after that.**

15 **And then sitting in the dining hall,**  
16 **police officers around. Some looked very annoyed.**  
17 **Some were very consoling. The people in there --**  
18 **there weren't all the people -- you could tell**  
19 **there wasn't 50, 60 people in there. Where are**  
20 **those other people? How badly are they hurt?**

21 **And then the police come in and say,**  
22 **Kirby and James are deceased. It gets to be too**  
23 **much. And then you're up there and you're supposed**  
24 **to be telling the police officer what happened, and**  
25 **there is stuff happening around you and people**

1 crying. And you're wondering who is sick and whose  
2 dying.

3 Yeah, it impacted me. It's impacted me  
4 to this day. I'm doing the best I can to  
5 straighten it out.

6 MR. KELLY: Objection, not responsive. Ask  
7 the final portion be stricken.

8 THE COURT: Just the last portion. There was  
9 no question pending at the time.

10 Ms. Polk, please ask a question.

11 Q. BY MS. POLK: How have you, Mr. Rock,  
12 worked through what you just described?

13 MR. KELLY: Your Honor, objection. Relevance.

14 THE COURT: Sustained.

15 Q. BY MS. POLK: Let's talk about the first  
16 interview that night. When you were interviewed by  
17 Detective Parkinson (sic throughout), did you give  
18 Detective Parkinson a complete statement that  
19 night?

20 A. I gave her as much information as I could  
21 give her. Yeah. I gave her -- I did the best I  
22 could with what I could do in the condition that I  
23 was in.

24 Q. Was there information that you did not  
25 give Detective Parkinson that night?

1 A. Yes. Afterwards I realized that there  
2 was.

3 Q. When did you realize that you had not  
4 given her some information?

5 A. It's been over the course of the last 18  
6 months. Things come to me and I don't -- I  
7 understand that they happened and -- I mean, I  
8 couldn't give you date of when it happens, but it  
9 happens.

10 Q. And can you explain to the jury the  
11 process over the 18 months that you have gone  
12 through to be able to recall what happened inside  
13 the sweat lodge.

14 MR. KELLY: Your Honor, objection. Relevance.

15 THE COURT: Overruled.

16 THE WITNESS: When I first got back from the  
17 sweat lodge, I was in shock --

18 MR. KELLY: Your Honor, objection.

19 Nonresponsive.

20 THE COURT: Overruled.

21 THE WITNESS: I went back and read all the  
22 books that James Ray had given us to read for that  
23 event. And in those books I found out what  
24 happened to me and what happened there to some  
25 degree.

1 MR. KELLY: Your Honor, objection. First  
2 Amendment.

3 THE COURT: Sustained. Nonresponsive.

4 Q. BY MS. POLK: Have you undergone a  
5 healing process, Mr. Rock?

6 MR. KELLY: Your Honor, objection. Relevance.

7 THE COURT: Counsel, please approach.  
(Sidebar conference.)

9 THE COURT: I'm trying to get on track with  
10 this, this line of questioning.

11 Mr. Kelly.

12 MR. KELLY: Your Honor, regardless of a  
13 witness's healing process, this is criminal case,  
14 and he's a fact witness. He can tell us what he  
15 remembers, period. How he's feeling is irrelevant,  
16 and it's highly prejudicial. These questions  
17 regarding that somehow being under the control of  
18 James Ray, which you earlier sustained, are equally  
19 objectionable.

20 I don't understand why the witness can't  
21 testify about what he knows not, not what he feels.

22 THE COURT: Ms. Polk.

23 MS. POLK: Your Honor, this witness is allowed  
24 to explain to the jury why he did not make  
25 statements that night and what the process was that

1 allowed him to work through what was a very  
2 traumatic event and allow them to accept what  
3 happened, accept what he heard and work through it.

4 That's what he's trying to do is explain  
5 to the jury why he was not forthcoming that night  
6 and what the process was over the next 18 months  
7 that leads to his testimony here today.

8 MR. KELLY: Judge, just for the record, I have  
9 to remind the Court he has prior sworn testimony on  
10 November 16, 2010, in front of this court where it  
11 was not mentioned.

12 THE COURT: I didn't -- the questions directly  
13 going to his process of remembering or something,  
14 but, Ms. Polk, just kind of a long narrative of  
15 everything he does and going back -- it just gets  
16 into a long narrative about what he's read.

17 Questions focusing on how it is he  
18 recalled things -- those are legitimate questions.  
19 But self -- you know -- psychoanalysis and those  
20 kinds of things, it's just -- you don't run into  
21 testimony. Just general narrative of -- cannot be  
22 general narrative.

23 But if it actually has to do with  
24 inability to recall or something, again, I think  
25 it's going to get really into a self-diagnosing or

1 something. I'm just going to have to go question  
2 by question. But it cannot be a narrative.

3 Thank you.

4 (End of sidebar conference.)

5 MS. POLK: Thank you.

6 Q. Mr. Rock, after October 8 and what  
7 happened in the sweat lodge, where did you go --  
8 let me ask a better question. After that week  
9 where did you return to?

10 A. **I returned home to Channahon, Illinois.**

11 Q. How long did you remain in Illinois?

12 A. **Until around August 7 of 2010.**

13 Q. What did you do in August of 2010?

14 A. **I -- my wife and I came to Arizona, and  
15 we stayed with a friend in Phoenix for a couple of  
16 weeks. And then we went and we volunteered to help  
17 out at Angel Valley.**

18 Q. Why did you come back to Angel Valley in  
19 August of 2010?

20 A. **I came back to Angel Valley in 2010 as  
21 part of my healing process, to go back there and to  
22 sort things out in my mind and try and make myself  
23 better. I'm a do-it-yourself type person. I've  
24 been trying to make myself better and feel better  
25 since that day.**

1 Q. During the time -- how long did you stay  
2 at Angel Valley, then, in 2010?

3 A. **Until the first couple days of 2011. I  
4 can't remember exactly which day.**

5 Q. During the time, then, last fall when you  
6 were at Angel Valley, did you have the opportunity  
7 to discuss the events with other people -- the  
8 events from October 8 of 2009?

9 A. **Discuss the event with my wife, with some  
10 of the people at Angel Valley. Yes.**

11 Q. And who at Angel Valley did you discuss  
12 the events with?

13 A. **Well, mostly Michael and Amayra Hamilton,  
14 little bit with Fawn Foster. Little bit with  
15 Kirsten Johnson. Pretty much it.**

16 Q. What was your purpose in discussing the  
17 events of October 8 with the people you just  
18 mentioned?

19 A. **It just has to come out. When you start  
20 to remember and you can't keep this inside of you  
21 anymore, you have to talk to somebody.**

22 Q. Do you recall, Mr. Rock, whether in  
23 September of 2010 you then met with Detective Ross  
24 Diskin?

25 A. **Yes, I did.**

1 Q. And was that September 21st of 2010?

2 A. **I can't remember. But sounds right.**

3 Q. Do you recall if I was present for that  
4 meeting?

5 A. **Yes, you were.**

6 Q. What gave rise to your meeting with the  
7 detective in September of 2010?

8 A. **After I had talked to Amayra Hamilton,  
9 she said, I want to talk to the detective. And I  
10 said, yeah. I think I need to talk to him and tell  
11 him whatever I know.**

12 Q. And what was your purpose, then, in  
13 talking to the detective?

14 A. **To clarify everything that I had  
15 discovered that had happened that day.**

16 Q. And you said to clarify what you had  
17 discovered. When did you discover those events?

18 A. **Well, it was all -- like I said, the  
19 moment I went back home until that moment I talked  
20 to him, it was a road of discovery. It was always  
21 searching, looking to sort things out, and why did  
22 this happen? What did I do? What was my role in  
23 this?**

24 Q. Mr. Rock, I'd like, then, to talk  
25 about -- let's talk about the first the statement

1 you made to Detective Parkinson on October 8  
2 of 2009. And that night do you recall whether you  
3 discussed with Detective Parkinson the heat level  
4 in the sweat lodge that you participated in in 2008  
5 as compared to the heat level in 2009?

6 A. **Yes. I can recall talking to her at two  
7 different points in that interview.**

8 Q. And what do you recall you told  
9 Detective Parkinson on the night of October 10?

10 A. **The first time I said something about I  
11 didn't think it was hotter, or it wasn't hotter.  
12 And the second time I said, it was hotter. I  
13 believe I said, it was hotter.**

14 Q. Have you had the opportunity, Mr. Rock,  
15 to look at a transcript of your interview with  
16 Detective Parkinson?

17 A. **Yes. That's how I know that.**

18 Q. And if I provide you with a copy of the  
19 transcript, would that refresh your recollection as  
20 to whether you ever told Detective Parkinson that  
21 it was hotter in 2009 than 2008?

22 A. **Yes.**

23 Q. I'm going to show you, then, what's been  
24 marked as Exhibit 697. Just take your time and  
25 look through there and find that.

1 **A. What I feel is -- that statement is on**  
 2 **page 12, line 22. And I said, all I know is that**  
 3 **rocks came in. It came towards us, and it was**  
 4 **really hot when it happened.**

5 MR. KELLY: Your Honor, pursuant to 106, I  
 6 believe the jury at this point in time is entitled  
 7 to hear his entire statement or at least portions  
 8 regarding his testimony that the heat was the same.  
 9 Rule of completeness. I have no objection to  
 10 playing the audio.

11 MS. POLK: Your Honor, I'll draw the witness's  
 12 attention to the statement that Mr. Kelly just  
 13 referred to.

14 THE COURT: Okay.

15 Q. BY MS. POLK: Mr. Rock, would you look at  
 16 page 3, line 28.

17 A. Okay.

18 Q. And I'm going to read to you. This is at  
 19 the bottom.

20 Detective Parkinson said, okay. Was  
 21 there anything different about the sweat lodge from  
 22 last year as opposed to this year?

23 And do you see your answer?

24 A. I said, no.

25 Q. And then Parkinson said, it's the same?

1 And what did you say?

2 A. Yeah. It's the same, pretty much the  
 3 same. Heat level felt the same. It was enclosed  
 4 the same way.

5 Q. And then Detective Parkinson said, the  
 6 same amount of rounds with the rocks?

7 And what did you say?

8 A. I said, I think there was. I don't know  
 9 because I was -- towards the end I was in and out  
 10 of it. So you lose track of how many times you're  
 11 doing it. But I was told there were eight instead  
 12 of seven. Last year it was seven rounds. This  
 13 year it was eight. But I don't know what that  
 14 meant in time.

15 Q. And then drawing your attention back to  
 16 page 12.

17 MR. KELLY: Your Honor, again, I would request  
 18 that the audiotape be played for the jury.

19 THE COURT: Ms. Polk.

20 MS. POLK: Your Honor, I don't have access to  
 21 the audiotape. I believe the transcript is  
 22 adequate to refresh the recollection.

23 MR. KELLY: Judge, we have the transcript.  
 24 It's marked for identification as 697. Ms. Do is  
 25 getting the audio.

1 THE COURT: Ms. Polk, if it's available?

2 MS. POLK: Your Honor, I think counsel can  
 3 certainly do that on their cross-examination.

4 THE COURT: Appropriate matters can be covered  
 5 in cross. I don't want to have argument.

6 MR. KELLY: I understand, Judge. But, for the  
 7 record, I will reassert my prior arguments. And  
 8 under 106 the jury is entitled -- on direct  
 9 entitled to hear the complete statement  
 10 contemporaneous with the testimony.

11 THE COURT: Ms. Polk, please continue.

12 Q. BY MS. POLK: Mr. Rock, then going to  
 13 page 12, which is where you directed my attention  
 14 to?

15 A. Right.

16 Q. What is the information that concerns the  
 17 heat level?

18 A. Number 22. All I know is that the rocks  
 19 came in. It came towards us, and it was really hot  
 20 when it happened.

21 Q. What do you recall today about the heat  
 22 level in the sweat lodge in 2009?

23 A. That it was really hot and suffocating,  
 24 and it was way more heat than I experienced  
 25 in 2008.

1 Q. In 2008 did you stay in the sweat lodge  
 2 the whole time?

3 A. No, I did not.

4 Q. Going back to your interview with  
 5 Detective Parkinson the evening of October 8, 2009,  
 6 do you recall whether you discussed with her  
 7 whether you noticed anyone having problems during  
 8 the sweat lodge ceremony in 2009?

9 A. I believe so. Yes.

10 Q. You believe that you did? Do you recall  
 11 what you told Detective Parkinson that night about  
 12 whether you noticed anyone having problems during  
 13 the ceremony?

14 A. I don't know my exact words. No.

15 Q. Let me direct your attention, then, to  
 16 the exhibit in front of you, page 8, lines 22 to  
 17 24.

18 MR. KELLY: Your Honor, again, I'd ask 106 be  
 19 played, play the tape.

20 THE COURT: Overruled.

21 Continue, Ms. Polk.

22 Q. BY MS. POLK: And do you see on line --  
 23 this is page 8, line 22. Detective Parkinson says,  
 24 okay. At what point did you notice anyone having  
 25 problems.

1 And what did you say?

2 **A. I said, I really didn't notice. I**  
3 **focused on what I was doing. I was focused on my**  
4 **breathing. I was focused on taking care of myself.**  
5 **I thought that by lifting that up, but not only**  
6 **would I get some air, but Dawn might get some air,**  
7 **and Sean. They were both right next to me. They**  
8 **were both on their backs. I was on my stomach.**

9 **Q.** And then let me direct your attention  
10 also to page 9.

11 MR. KELLY: Your Honor, for the record, I'd  
12 make the same request under 106 and object to the  
13 form of the question.

14 THE COURT: Sustained. Sustained as to the  
15 form of the question.

16 **Q.** BY MS. POLK: Do you recall whether --  
17 Mr. Rock, do you recall whether there were other  
18 places in the interview with Detective Parkinson on  
19 the night of October 8 where you discussed with her  
20 whether you noticed anyone having problems inside  
21 the sweat lodge?

22 MR. KELLY: Your Honor, I'd ask the record  
23 reflect the witness is now reading Exhibit 697.

24 THE COURT: The record is going to show that.

25 **Q.** BY MS. POLK: And without looking at the

1 transcript, do you recall whether you discussed  
2 with Detective Parkinson more than once whether you  
3 noticed people having problems during Mr. Ray's  
4 sweat lodge ceremony in 2009?

5 **A. I believe it's possible, but I'm not**  
6 **sure.**

7 **Q.** And if you looked at a transcript of  
8 that interview, would that refresh your  
9 recollection?

10 **A. Yes.**

11 **Q.** Would you do that. Look at the  
12 transcript in front of you.

13 **A. Yes.**

14 **Q.** And let me direct your attention to  
15 page 9, line 28.

16 **A. Okay.**

17 **Q.** Do you see where Detective Parkinson  
18 asked you, so you said that you really didn't  
19 notice anybody with problems because you were busy  
20 breathing and doing your thing?

21 And how did you respond?

22 **A. I said, right. And Sean was lucid and**  
23 **talking. He was talking. So I heard him talking.**  
24 **And Kirby was responding. But I thought they were**  
25 **doing that all the way to the end. Dawn told me**

1 **they weren't, so I don't know.**

2 **Q.** Detective Parkinson said, okay --

3 MR. KELLY: Your Honor, objection to the form  
4 of the question again and ask per 106 it be played.

5 THE COURT: Sustained as to the form of the  
6 question.

7 **Q.** BY MS. POLK: Let me ask you this,  
8 Mr. Rock: With respect to your testimony at this  
9 trial concerning statements you heard about Kirby  
10 Brown and the response given by Mr. Ray, when did  
11 you notice that she was having problems inside the  
12 sweat lodge?

13 **A. I've testified, I believe, to the six --**  
14 **between the sixth and seventh round that I heard**  
15 **Kirby Brown gurgling, and it was horrible. And he**  
16 **said -- somebody said that Kirby was having**  
17 **trouble. And I heard him say, close the gate.**  
18 **We'll take care of that after this round, or**  
19 **something to that effect.**

20 MR. KELLY: Excuse me, Judge. May we  
21 approach?

22 THE COURT: Yes.

23 (Sidebar conference.)

24 MR. KELLY: Your Honor, not under Rule 106,  
25 out of fairness I would request that Exhibit 690 be

1 played to the jury. And I believe it has to be  
2 done contemporaneously with the several statements  
3 elicited by Ms. Polk.

4 THE COURT: Without the statement here the --  
5 reading them a portion of a statement, Mr. Kelly,  
6 is not going to have a whole interview transcript  
7 come in. Normally in trials on cross it's brought  
8 up in that fashion. Some people want to do it that  
9 way, rereading one six. I remember that came up  
10 earlier in this trial. It's come up a number of  
11 times. It is a recording.

12 If in fairness the whole -- it ought to  
13 be read contemporaneously or played, it should.  
14 But it certainly doesn't mean the entire interview.

15 MR. KELLY: Judge, if I may make a statement  
16 in regards to the fairness aspect of 106. This  
17 witness this morning has testified in regards to  
18 the purported circumstances surrounding his  
19 providing a statement. He said people were crying  
20 and upset and, essentially, described a scene where  
21 some police officers were annoyed. Some were  
22 consoling.

23 I believe the actual audiotape is -- the  
24 background information is going to address the  
25 actual environment in which the statement was taken

1 as well as the tone of his voice. The statement  
2 now has been parsed into the material portions  
3 relating to the heat and why he didn't render aid.

4 You are correct, Judge. The statement is  
5 22 minutes in length. And the first portion of it  
6 he provides some background information which is  
7 not material. I would concede that.

8 But out of fairness, that de minimus,  
9 irrelevant portion is not outweighed by -- in  
10 fairness to this jury, they should hear the actual  
11 audiotape at this point in time.

12 And it's the government's evidence. It's  
13 the facts. It's the truth. And all we're doing is  
14 asking that it be played right now so that -- this  
15 final question was something along the lines of why  
16 didn't you tell them why Kirby was -- the sounds he  
17 heard.

18 Before Ms. Polk proceeds down that line  
19 of questioning contrasting the statement, now is  
20 the time to play the statement, out of fairness.

21 THE COURT: Ms. Polk.

22 MS. POLK: Your Honor, this is appropriate  
23 direct examination. Mr. Kelly can certainly use  
24 prior statements in any way he wants to to impeach.  
25 But to continually interrupt my direct examination

1 on the 106 issue when this court has overruled that  
2 objection and throughout this entire trial has  
3 consistently ruled that parties can bring up  
4 information surrounding the statement on their  
5 redirect or on their cross -- to suddenly deviate  
6 from that practice and require the state during my  
7 direct examination to play evidence that the  
8 defense has prepared, there is simply no precedence  
9 for it.

10 I am not taking things out of context.  
11 If he wants me to expand, I can certainly do that.  
12 But there is no basis to insist in the middle of my  
13 direct examination that I suddenly stop and play a  
14 complete 22-minute tape.

15 THE COURT: The test of fairness -- and I  
16 think normally it can be satisfied on cross.  
17 However, I've tried to look at each situation.

18 Ms. Polk, obviously if there is two lines  
19 side by side and explains an answer, Mr. Kelly, I'd  
20 like to see it come in at that time, but not the  
21 whole tape.

22 Mr. Kelly, you can urge that argument at  
23 the time, and it may be played. But right now on  
24 each point what ought to come in under 106 is just  
25 a complete answer. That's what ought to come in.

1 If it's qualified, it should come in.

2 MR. KELLY: Judge, I have to reply very  
3 quickly. First of all, if I don't object, it's  
4 waived. So that's -- I'm not trying to be  
5 obstreperous to the state's questioning of this  
6 witness. It simply places me in a difficult  
7 position.

8 Secondly, with all due respect, this  
9 witness is different than any other witness in this  
10 trial because approximately 10 minutes ago he  
11 perjured himself. And I have the exact response.  
12 And it's contrary to his sworn testimony on  
13 November 16, 2010. So Mr. Rock's in a different  
14 position than any witness we've heard from.

15 Thank you.

16 THE COURT: So my ruling, Mr. Kelly, just to  
17 make clear, Ms. Polk, I'd like the complete answer  
18 on a point.

19 And, Mr. Kelly, I'm not -- I don't have  
20 continuing objections. You know that. I made that  
21 clear too. So yes. You have to object if you  
22 think it's appropriate. But, as I said, you're  
23 going to be able to cover this on cross. I'd like  
24 to see the testimony move on through.

25 Thank you.

1 (End of sidebar conference.)

2 THE COURT: Ms. Polk.

3 MS. POLK: Thank you.

4 Q. When you were interviewed by  
5 Detective Parkinson on the night of October 8,  
6 2009, Mr. Rock, why did you not tell her about the  
7 testimony you gave to the jury about statements you  
8 heard concerning Kirby Brown being in trouble?

9 A. Because -- well, what I've understood  
10 that to be now is I repressed that memory because  
11 it was so horrible. And that memory just comes  
12 back in a nightmare, day nightmare. It just comes  
13 back, and you know how real it is.

14 Q. Do you recall when it was that that  
15 memory came back to you?

16 A. I can't tell you exactly. I can't tell  
17 you exactly when. I know it was -- it was before  
18 the end of 2009, the end of the year. I don't know  
19 exactly when it happened.

20 Q. And when you were interviewed by  
21 Detective Diskin on September 21st of 2010, did you  
22 provide that information to him at that time?

23 A. Yes, I did.

24 Q. Are you able to recall today when it was  
25 inside the sweat lodge of 2009 that you last heard

1 Kirby Brown talking?

2 **A. My belief is the fourth or fifth round,**  
3 **somewhere in there. My recollection is that I was**  
4 **hoping that she was talking to the end.**

5 **Q.** When you last heard her talking, do you  
6 have any recollection today of what she was saying?

7 **A. Just her and Sean were arguing back and**  
8 **forth about language.**

9 MR. KELLY: Your Honor, objection.

10 THE COURT: Overruled.

11 **Q.** BY MS. POLK: And do you recall what they  
12 were saying about language?

13 MR. KELLY: Your Honor, objection. Hearsay.

14 THE COURT: It could be. Sustained.

15 MS. POLK: Your Honor, it's not offered to  
16 prove the truth of what they were saying.

17 MR. KELLY: Relevance.

18 THE COURT: It's not offered for the truth  
19 that may be asserted. So with that understanding,  
20 overruled.

21 **Q.** BY MS. POLK: Do you recall what they  
22 were saying about language -- Sean and Kirby?

23 **A. Well, in James Ray teachings, language**  
24 **was very important.**

25 MR. KELLY: Your Honor, objection.

1 Nonresponsive.

2 THE COURT: Sustained.

3 **Q.** BY MS. POLK: Without explaining your  
4 understanding of it, do you recall the words that  
5 Kirby and Sean were using when they talked to one  
6 another about language?

7 **A. Something to the effect that -- it had to**  
8 **do with I'm better than that or I'm stronger than**  
9 **that or something to that effect. I can't remember**  
10 **exactly how Kirby put it, but it wasn't agreeable**  
11 **to Sean.**

12 **Q.** Do you recall inside the sweat lodge when  
13 you last heard Sean say anything?

14 MR. KELLY: Your Honor, objection. Hearsay.

15 THE COURT: That was --

16 First of all, if it can be answered yes  
17 or no in terms of factual knowledge, you may answer  
18 in that fashion if you can, Mr. Rock.

19 THE WITNESS: Yes.

20 **Q.** BY MS. POLK: And when was it that you  
21 last heard Sean say anything inside the sweat  
22 lodge?

23 **A. That exchange with Kirby that I just**  
24 **described.**

25 **Q.** What round do you think that was?

1 **A. Fourth or fifth round.**

2 **Q.** And would you remind the jury -- let me  
3 get out our exhibits. Just remind the jury again  
4 where you were sitting.

5 And show the jury where Sean was sitting.

6 **A. Right next to me.**

7 **Q.** And show the jury where Kirby Brown was  
8 sitting.

9 **A. Right over here.**

10 **Q.** When you -- when the sweat lodge ceremony  
11 was over and you left, were you aware of Sean at  
12 all?

13 **A. No.**

14 **Q.** And do you recall today Sean's last name?

15 **A. Ronan.**

16 **Q.** Did you ever become aware of Sean after  
17 you were outside after the ceremony was over?

18 **A. No.**

19 **Q.** And do you know -- this is yes or no. Do  
20 you know what position Sean Ronan was inside the  
21 sweat lodge? Face down? Face up? Sitting? Do  
22 you know?

23 **A. The last time was when he was face up.**

24 **Q.** Face up?

25 **A. Uh-huh.**

1 **Q.** And, again, when did you -- when is your  
2 last recollection of seeing Sean Ronan inside the  
3 sweat lodge?

4 **A. I just -- he was laying right next to me**  
5 **touching me. So that's the last recollection I**  
6 **have of him.**

7 **Q.** Do you recall today how many rounds Sean  
8 was face up?

9 **A. No.**

10 **Q.** Do you recall if he was ever face down?

11 **A. No.**

12 **Q.** Do you recall, Mr. Rock, if you -- when  
13 you were interviewed by Detective Parkinson, if you  
14 ever told Detective Parkinson whether anyone had  
15 told you what to say when interviewed by the cops?

16 **A. Yes.**

17 **Q.** What did you tell Detective Parkinson?

18 **A. I told her that if anybody said anything**  
19 **to me, I wouldn't listen to them anyway.**

20 **Q.** Prior to your interview with  
21 Detective Parkinson, did you talk to some Dream  
22 Team members?

23 **A. They approached me and talked to me.**

24 **Yes.**

25 **Q.** And who approached you?

1 **A. I believe it was Christina Jobe and Barb**  
2 **Waters.**

3 **Q.** Do you recall where you were when they  
4 approached you?

5 **A. In the dining hall.**

6 **Q.** And did they say anything to you about  
7 your statement to the detective?

8 **A. They said --**

9 MR. KELLY: Your Honor, objection. Hearsay.

10 THE COURT: It was a yes or no first.

11 You can answer that question.

12 THE WITNESS: Yes.

13 **Q.** BY MS. POLK: And what did they say?

14 MR. KELLY: Your Honor, objection. Hearsay.

15 THE COURT: It could be. So sustained.

16 **Q.** BY MS. POLK: Did what they said to you  
17 affect your statement to the detective?

18 **A. At the time I didn't think it did. No.**

19 **Q.** And today do you think it did?

20 **A. Today I think it's a possibility.**

21 MS. POLK: Your Honor, I would ask that the  
22 witness be allowed to say what the statement was  
23 from the Dream Team members. It's offered to prove  
24 the effect on this witness.

25 MR. KELLY: Your Honor, may we approach?

1 THE COURT: Yes.

2 (Sidebar conference.)

3 THE COURT: Okay, Mr. Kelly.

4 MR. KELLY: Your Honor, the problem is that  
5 the application that the statement from the --

6 THE BAILIFF: Your Honor, should we take the  
7 jury out? One of them is getting sick.

8 THE COURT: Yes.

9 (End of sidebar conference.)

10 THE COURT: We will go ahead and take the  
11 recess, ladies and gentlemen.

12 Mr. Rock, remember the rule. Remember  
13 the admonition.

14 Ask the parties to remain.

15 Thank you.

16 (Proceedings continued outside presence  
17 of jury.)

18 THE COURT: Thank you. Please be seated.

19 Mr. Rock has left the courtroom. The jury has  
20 left. And, of course, this item of testimony has  
21 been anticipated anyway that was going to be  
22 offered at some point.

23 Mr. Kelly.

24 MR. KELLY: Judge, I have two matters. But in  
25 regards to the issue before the Court, I think it's

1 clear that the witness has now testified in regards  
2 to the state of mind that he heard, and I'm  
3 paraphrasing, that that evening he heard a comment  
4 from two individuals who were Dream Team members,  
5 which may have possibly affected his statement to  
6 Detective Parkinson on October 8, 2009.

7 He has explained this morning on several  
8 occasions why he believes he has a better  
9 recollection today than he did then. So the  
10 relevance now is minimal, de minimus at best. And  
11 the potential prejudice is extreme in this regard,  
12 that the implication is that the order not to  
13 cooperate with the police -- and that's the proffer  
14 provided by the state last Friday -- is simply to  
15 smear my client.

16 And the implication is that it came from  
17 James Ray. And there is no factual connection  
18 whatsoever. And I remind the Court of all the  
19 arguments dating back to November of 2010 during  
20 the evidentiary hearing, there is not one witness  
21 to connect up these statements, various statements,  
22 made by Dream Team members to Mr. Ray. It's simply  
23 innuendo or implication, highly or potentially  
24 highly prejudicial.

25 Now, given his response, it has no

1 relevance at this point in time. He explained that  
2 based on that conversation, it may have possibly  
3 affected his statement to Detective Parkinson. Why  
4 would it be necessary to talk about the  
5 conversation, which is clearly hearsay?

6 And, of course, also, Judge, we have  
7 significant Sixth Amendment problems because I  
8 cannot confront and cross-examination the purported  
9 maker of the statement.

10 THE COURT: Ms. Polk.

11 MS. POLK: Your Honor, it's a statement not  
12 offered to prove the truth of the matter asserted,  
13 but offered to provide the context for inconsistent  
14 statements.

15 THE COURT: I just looked at the answer. He's  
16 speculating it's a possibility. He did not think  
17 it was at the time. The evidence is now there that  
18 possibly somebody said something to him that could  
19 have affected his -- it being how he first  
20 described what he observed.

21 There is just speculating now it's a  
22 possibility. So I don't see the foundation for it  
23 for going any further. So sustained.

24 MR. KELLY: Your Honor, if I may have a couple  
25 minutes, I believe we now have a much more serious

1 problem in this case. It relates to the earlier  
2 discussion. And, again, these are simply my notes.

3 THE COURT: Mr. Kelly, before you get started  
4 on that, I want to check. Apparently a juror is  
5 not feeling well. I'd like to ask Ms. Rybar.

6 Is it a bad situation?

7 THE BAILIFF: I can't tell you right now.  
8 He's in the rest room. I'll let you know as soon  
9 as --

10 THE COURT: Okay. Thank you. I'll wait until  
11 he's back. There is a consideration.

12 Mr. Kelly, go ahead.

13 MR. KELLY: Here's the problem: This has been  
14 briefed and argued. I may have been mispronouncing  
15 this. But the Nappu versus Illinois case of 1959.  
16 It's well settled that the -- that the government  
17 cannot present false testimony. And the standard  
18 is that the testimony was actually false.

19 Secondly, that the prosecution knew or  
20 should have known that the testimony was actually  
21 false. And the third prong is that the false  
22 testimony was material.

23 We have, given Ms. Polk's offer,  
24 determined, I would submit, Judge, that the  
25 testimony is material. Now, Judge, as to prong 1,

1 that the testimony was actually false today,  
2 Mr. Rock said in response to one of Ms. Polk's  
3 questions -- and again I'm paraphrasing, so I'm not  
4 trying to mislead the Court. He said, today I  
5 understand that it was really hot in the sweat  
6 lodge. It was suffocating in 2009.

7 That is contrary to his sworn statement  
8 on November 16; his statement provided to  
9 Detective Boelts on October 29, 2009; contrary to  
10 his statement provided to Detective Parkinson on  
11 October 8, 2009. And it's clearly false.

12 So he has either -- because if you recall  
13 last Friday's argument -- and we have now marked as  
14 Exhibit 1068 the transcript from the proceedings of  
15 November 16, 2010, in front of this court -- the  
16 question was posed, can we rely upon -- under oath  
17 can we rely upon the substance of your conversation  
18 on October 8, 2009, as true.

19 He said, yes.

20 Today he says now, all of a sudden, as to  
21 the material fact, that it was really hot and  
22 suffocating, on June 1, 2011.

23 The reason I point out, I believe, our  
24 issue that we've discussed this morning has now  
25 come to fruition, is that based on this United

1 States Supreme Court case, I would submit, Judge,  
2 the prosecution either knows or should know of a  
3 false testimony.

4 And given that, Judge, I would submit  
5 that we simply cannot proceed in court in Yavapai  
6 County, Arizona, with false testimony. We need to  
7 start considering remedies versus this continued  
8 attempt to explain away statements which are  
9 actually favorable to the defense, exculpatory  
10 statements. The state's continued attempt to  
11 explain away those exculpatory statements is  
12 improper, Judge.

13 THE COURT: Ms. Polk.

14 MS. POLK: Your Honor, Mr. Rock has taken an  
15 oath to tell the truth, to testify truthfully. And  
16 he is testifying that he gave incomplete statements  
17 earlier on and that it's been a process of recall  
18 today.

19 He has testified that what he talked  
20 about in the earlier interviews with law  
21 enforcement was not a complete statement and has  
22 testified under oath that what he's providing today  
23 is the truth of that. I'm not sure what the issue  
24 is.

25 THE COURT: Mr. Kelly.

1 MR. KELLY: Judge, he did testify. And,  
2 again, the record speaks for itself that he had a  
3 suppressed memory and he can't tell you exactly  
4 when he remembered this fact. However, it was  
5 before the end of 2009. He was not under any type  
6 of altered state. He was not in some debilitating  
7 emotional condition, and he was under oath on  
8 November 16, 2010, when he swore to this court that  
9 his interview of October 8, 2009, was correct. And  
10 that was that the heat level between the two sweat  
11 lodges was the same.

12 So either he has lied in November 16,  
13 2010, or June 1, 2011. And the issue is, Judge, as  
14 briefed, is that in a free, democratic society we  
15 do not present false testimony to convict people.  
16 We don't know what the jury is going to rely on.  
17 That's the problem.

18 It's not simply one of impeachment,  
19 pleading the record, Rule 106, my ability to bring  
20 out inconsistent statements, or even telling this  
21 jury that he's been provided use immunity by the  
22 State of Arizona. That helps.

23 But the real issue is in the state of  
24 Arizona we do not allow convictions to be premised  
25 upon false testimony. Something is not true.

1 That's my point. I don't want to call the man a  
2 liar, but at some point in time between October 8,  
3 2009, and today he's not telling the truth.

4 If he wants to rely on his emotional  
5 condition and his altered state -- you saw his  
6 demeanor on November 16, 2010. His only emotional  
7 state was anger towards me. It was not anything  
8 relating to his ability to recollect. He didn't  
9 have -- unless that's an altered stated.

10 Anyway, Judge, I've made my record. I  
11 believe it's a serious concern. And I ask you to  
12 consider it. I believe the real discussion should  
13 be what's the appropriate remedy in the spectrum  
14 from some type of striking of his testimony and the  
15 jury instruction to a mistrial. I'm not sure. But  
16 it is, in my opinion, Judge, quite serious.

17 THE COURT: These are topics for  
18 cross-examination. He's provided his explanation  
19 for differences. And it is a matter for  
20 cross-examination.

21 We need to see how the juror is doing.  
22 But I do want to resume by quarter till. We'll  
23 just have to see.

24 Thank you.

25 (Recess.)

1 (Proceedings continued in the presence of  
2 jury.)

3 THE COURT: The record will show the presence  
4 of Mr. Ray, the attorneys, the jury. Mr. Rock is  
5 on the witness stand.

6 Ms. Polk.

7 MS. POLK: Thank you, Your Honor.

8 Q. Mr. Rock, do you recall testifying at a  
9 hearing in this courtroom on November 16, 2010?

10 A. Yes.

11 Q. And do you recall during that hearing  
12 Mr. Kelly handing you a copy of the transcript that  
13 you still have in front of you, the statement that  
14 you gave to Detective Parkinson on the night of  
15 October 8 of 2009?

16 A. Yes.

17 Q. Do you recall whether Mr. Kelly asked you  
18 what your state was when you gave that statement to  
19 Detective Parkinson?

20 MR. KELLY: Your Honor, I'd ask the record  
21 reflect the witness appears to be reading the  
22 statement.

23 THE COURT: It appears Mr. Rock is actually  
24 reading the transcript.

25 Q. BY MS. POLK: And the transcript you have

1 in front of you is actually the transcript of  
2 Detective Parkinson's interview in October of 2009;  
3 correct?

4 A. Yes.

5 Q. And if I provided you a transcript of  
6 your testimony on November 16, 2010, would that  
7 refresh your recollection as to the question I just  
8 asked?

9 A. Yes.

10 Q. Let me provide you with a copy of  
11 Exhibit 1068. And direct your attention to  
12 page 13. If you will just take a moment to read  
13 lines 1 through 25 to yourself.

14 THE COURT: Ms. Polk, would you remove the  
15 exhibit since there is no question, please?

16 THE WITNESS: Okay.

17 Q. BY MS. POLK: Have you had the  
18 opportunity to refresh your recollection as to the  
19 question that Mr. Kelly posed to you at that time?

20 A. Yes.

21 Q. And so, again, first of all, do you  
22 recall at that hearing that Mr. Kelly provided you  
23 with a transcript of your interview by  
24 Detective Parkinson?

25 A. Yes.

1 Q. And do you recall whether Mr. Kelly asked  
2 you what state you were in when you were  
3 interviewed by Detective Parkinson?

4 A. Yes.

5 Q. And do you recall what you told Mr. Kelly  
6 at the hearing on November 16, 2010?

7 A. I was in an altered state.

8 Q. Do you recall that you responded, yes, I  
9 was slightly altered?

10 A. Yes.

11 Q. What do you recall today about the state  
12 that you were in when you were interviewed by  
13 Detective Parkinson?

14 A. What I recall today is I was in an  
15 altered state. I was in shock. I was in extreme  
16 distress.

17 Q. And do you recall at the hearing, then,  
18 on November 16 of 2010 whether Mr. Kelly asked you  
19 if we could rely on the content or substance of the  
20 interview you gave to Detective Parkinson on  
21 October 8 of 2009?

22 MR. KELLY: Your Honor, object to the form of  
23 the question. The question was -- and ask the  
24 actual question be provided to the jury.

25 THE COURT: Sustained.

1 MS. POLK: Your Honor, I can read the actual  
2 question, then.

3 THE COURT: Okay. Please proceed.

4 Q. BY MS. POLK: Do you recall, Mr. Rock,  
5 that on November 16, 2010, at that hearing that  
6 Mr. Kelly asked you, does that mean that we cannot  
7 rely on the content or the substance? And he was  
8 referring to the interview by Detective Parkinson.

9 Do you recall that question from Mr.  
10 Kelly? And if you look at page 13, line 12, you  
11 can see -- line 11, you can see it there.

12 A. Yes.

13 Q. And do you recall that you answered, no,  
14 it doesn't because it's as accurate as I can  
15 remember?

16 A. Yes.

17 Q. And what did you mean by that?

18 A. **Because during my process of coming**  
19 **through my healing, I've tried to remember**  
20 **everything possible as accurately as possible so**  
21 **when I was interviewed eventually I was able to**  
22 **tell the truth, that I know to be the truth.**

23 Q. And were you interviewed by  
24 Detective Diskin prior to this hearing?

25 A. Yes.

1 Q. I want to ask you, Mr. Rock, some  
2 questions about the interview that occurred on the  
3 telephone. And it was with a detective named  
4 Detective Boelts or Lieutenant Boelts. That took  
5 place on October 29 of 2009. Do you recall where  
6 you were when that interview took place?

7 A. **I was -- I believe I was in my home in**  
8 **Channahon, Illinois.**

9 Q. And you testified earlier you received a  
10 call from someone who identified himself as a  
11 police officer?

12 A. Yes.

13 Q. I believe you testified that you called  
14 him back to make sure that it was a police officer?

15 A. **I believe that was the proceeding that I**  
16 **did.**

17 Q. When you provided a statement to  
18 Lieutenant Boelts, did you believe him to be a  
19 police officer?

20 A. Yes.

21 Q. Do you recall how long that interview  
22 lasted?

23 A. **It wasn't real long. I don't know.**  
24 **Five, 10 minutes, I think.**

25 Q. And can you tell the jury, just generally

1 speaking -- you've talked about your process of  
2 healing and recollection. Where were you in that  
3 process on October 29 of 2009, which is about 21  
4 days after the sweat lodge ceremony?

5 A. **I wasn't hardly anywhere. I hadn't even**  
6 **barely begun compared to how it's turned out.**

7 Q. Do you recall in that interview with  
8 Lieutenant Boelts whether he asked you how the heat  
9 inside the sweat lodge in 2008 compared to the heat  
10 in 2009?

11 A. Yes, I do.

12 Q. Do you recall what you told him?

13 A. **Well, the part I recall and what I**  
14 **thought the question was -- and I'm not -- I don't**  
15 **have that in front of me. But I thought he was**  
16 **asking me was it hotter in other places in the**  
17 **sweat lodge. And I believe I said that -- I'm not**  
18 **100 percent because I don't have that.**

19 Q. Would you like me to provide you a  
20 transcript of that interview?

21 A. Yes.

22 Q. I'll provide you what's been marked as  
23 Exhibit 602. And I can direct your attention to  
24 page 1, lines 3 to 28.

25 A. Okay.

1 Q. Does that refresh your recollection as to  
2 your answer?

3 A. No.

4 Q. Are you able to recall today what you  
5 were thinking when you gave this answer?

6 MR. KELLY: Your Honor, objection. It doesn't  
7 refresh his recollection.

8 THE COURT: That was a question that would  
9 call for a yes or no.

10 If you can answer in that fashion, you  
11 may.

12 THE WITNESS: I know it's in the statement  
13 somewhere. It's in the statement.

14 Q. BY MS. POLK: Do you want to take a  
15 moment and look through the statement?

16 A. Yes.

17 Q. Go ahead.

18 A. **Well, I see a different statement in**  
19 **here.**

20 Q. Okay.

21 A. **Page 6, 9.**

22 Q. And after looking at page 6, line 9, does  
23 that refresh your recollection as to what you told  
24 Lieutenant Boelts about the heat?

25 A. **Yes. That's one of the things I told him**

1 about the heat.

2 Q. Okay. Why don't you tell the jury what  
3 you said.

4 A. The first two rounds are pretty -- the  
5 first round is, like, yeah. Okay. This is -- it's  
6 warm in here. The second round was starting to get  
7 really hot, but it was, like, oh. Okay. And then  
8 the third round it was hotter. And that's when a  
9 lot of people started, I'm sure, to lay down.

10 Q. Let me ask you this --

11 MR. KELLY: Your Honor, excuse me. Pursuant  
12 to 106, I'd ask that the witness read his response  
13 on page 1 to the question posed on line 26 and his  
14 response on line 27.

15 THE COURT: Is it directly related to the last  
16 passage?

17 MR. KELLY: Absolutely.

18 MS. POLK: And, Your Honor, that's the area I  
19 first directed the witness's attention to.

20 Q. We'll back up a little bit, Mr. Rock. My  
21 first question I had asked you whether or not you  
22 had discussed the heat with Lieutenant Boelts. So  
23 directing your attention to line 1, lines 23  
24 through 28, Lieutenant Boelts asked you, was this  
25 one any different than any others that you've

1 attended, or, well, I say, the one other that  
2 you've attended.

3 And you answered?

4 A. No. No. It's not.

5 Q. And then Lieutenant Boelts said, how did  
6 it compare in terms of heat and number of people?

7 And what did you say?

8 A. I said, it felt the same.

9 Q. And he says, okay.

10 And on page 6?

11 MR. KELLY: Excuse me, Judge. I'd ask the  
12 witness read the exact response on line 27.

13 THE COURT: Line 27?

14 MR. KELLY: Yes. Five words. Six words.

15 THE COURT: Mr. Rock.

16 THE WITNESS: Line 27, Your Honor?

17 THE COURT: Yes.

18 THE WITNESS: The heat felt the same.

19 MR. KELLY: Thank you, Judge.

20 Q. BY MS. POLK: And then Lieutenant Boelts  
21 said, okay.

22 Do you recall, Mr. Rock, whether the  
23 number of people -- how the number of people  
24 compared -- how the number of participants in 2009  
25 compared to the number of participants in 2008?

1 A. How many people were there each year? Is  
2 that what you're asking?

3 Q. Yes. Or how it compared in terms of  
4 numbers.

5 A. I think there was a few less people  
6 in 2009 that attended the event.

7 Q. Than in 2008?

8 A. Yes.

9 Q. Is that what you told Lieutenant Boelts?

10 A. I believe so. Yes.

11 Q. And then directing your attention to  
12 page 6 and the information about the -- that you  
13 just read to the jury about the third round it was  
14 hotter. Let me ask you this: If you were not  
15 inside the sweat lodge for the entire time in 2008,  
16 or given that you were not, can you compare the  
17 overall heat level between the sweat lodge in 2008  
18 and 2009?

19 A. No.

20 Q. What can you compare about the heat?

21 A. I can compare what rounds I was in  
22 in 2008 to 2009, but I can't compare the overall.

23 Q. On the day that Lieutenant Boelts  
24 interviewed you, do you recall whether he asked you  
25 how you felt that day?

1 Let me just ask you first, do you recall  
2 that, sitting on the stand today, whether  
3 Lieutenant Boelts asked you how you were feeling  
4 the day he interviewed you?

5 A. I believe he did ask me how I was  
6 feeling. I can't recall what he said. No.

7 Q. If you looked at the transcript of the  
8 interview, would that refresh your recollection?

9 A. Yes.

10 Q. Let me direct your attention to page 5,  
11 line 18. Does that refresh your recollection as to  
12 whether Lieutenant Boelts asked how you were  
13 feeling the day he interviewed you?

14 A. Yes.

15 Q. And what did you tell him?

16 A. I said that I feel great, actually.

17 So --

18 Q. Did you feel great that day?

19 A. I felt great until I had to do this  
20 interview. I can recall that. I didn't feel great  
21 afterwards.

22 Q. And why was that?

23 A. Because this is very painful to talk  
24 about. And it's something that I've been working  
25 on for such a long time, and this was right

1 after -- from what I've been told now, it's 21 days  
2 later. It was a roller coaster ride. You're  
3 feeling good, and then boom. It's gone.

4 Q. Did you talk about what happened early  
5 on?

6 A. Not really. No.

7 Q. When was it that you began to talk about  
8 it?

9 A. I would say the most I started talking  
10 about it was when I got back to Angel Valley.

11 Q. Turning your attention back to the  
12 interview by Lieutenant Boelts on October 29  
13 of 2009, do you recall whether Lieutenant Boelts  
14 discussed or asked you about the issue of a light  
15 during the sweat lodge ceremony?

16 A. Yes. He did ask me about light. I  
17 recall that.

18 Q. And what did you understand the question  
19 to concern when you were asked about a light?

20 A. Well, I believe the question about a  
21 light was if somebody lifted up the side or if the  
22 light came in the sweat lodge.

23 Q. Do you recall what you told  
24 Lieutenant Boelts at that time about whether you  
25 were aware of a light?

1 A. I can't recall exactly. No.

2 Q. Let me direct your attention to page 6,  
3 lines 24 to 28. See if that refreshes your  
4 recollection.

5 A. It's kind of a strange question, but  
6 yeah.

7 Q. Do you recall that Lieutenant Boelts  
8 asked you, did you hear anybody say anything about  
9 turn out a light or anything like that?

10 And you said, turn out a light?

11 And Lieutenant Boelts said, turn out the  
12 light or turn off the light or who brought the  
13 light in or anything of that nature.

14 A. What was strange about it is turn off the  
15 light --

16 Q. Let me ask you a question first. You  
17 responded, no. I didn't hear anything in that  
18 regard. No.

19 A. Okay.

20 Q. Do you recall today what you understood  
21 Lieutenant Boelts to be talking about?

22 MR. KELLY: Your Honor, objection as to the  
23 form of that question.

24 THE WITNESS: No.

25 THE COURT: Overruled. The answer stands.

1 Q. BY MS. POLK: And today what do you  
2 recall about anybody saying anything about turning  
3 out a light or anything like that?

4 A. What I recall today is what I said that  
5 night, which was that Melissa in the earlier round  
6 had lifted up the side. And James Ray said that  
7 was an abomination, blasphemy, and he was angry  
8 about it. That's what I recall about a light.

9 Q. And do you know why you didn't tell  
10 Lieutenant Boelts that when he interviewed you on  
11 October 29?

12 A. Just looking at it now, I wasn't clear on  
13 the question, I guess. I'm not sure.

14 Q. Do you recall whether Lieutenant Boelts  
15 asked you whether you had heard anyone ask for help  
16 to get out or to get anyone else out during the  
17 ceremony?

18 A. I don't remember a specific question,  
19 though.

20 Q. If you looked at the transcript, would  
21 that refresh your recollection?

22 A. Yes.

23 Q. Let me direct your attention to page 7,  
24 lines 2 to 4.

25 A. Okay.

1 Q. And Lieutenant Boelts specifically asked  
2 you, did you ever hear anybody ask for help in to  
3 get out or to get anyone else out?

4 And how did you answer?

5 A. I said, no, I didn't hear anybody say  
6 that.

7 Q. Let me ask you, Mr. Rock, did you ever  
8 hear anybody ask for help to get out or to get  
9 anyone else out?

10 A. Yes, I did.

11 Q. Do you know why you didn't tell  
12 Lieutenant Boelts what you heard?

13 A. That speaks back to the repressed memory  
14 of Kirby Brown gurgling her last breath, and James  
15 Ray saying, we'll take care of it later. That is  
16 so painful and my inability to do anything about  
17 it. And that's a memory that came on later. And  
18 that's all I can say.

19 Q. And you just testified that it's painful  
20 and your inability to do anything about it. What  
21 do you mean by that?

22 A. Well, I was there as a participant for  
23 the people that were there. And as I've said  
24 before, I had a great love for these people. And  
25 the painful part about it is that I wasn't

1 **physically or mentally capable of doing anything**  
2 **about it. And that's not who I am. I'm somebody**  
3 **who would have done something about it. And so**  
4 **that's what I live with.**

5 Q. Going back to the statement that you gave  
6 to Lieutenant Boelts on October 29, do you recall  
7 whether you discussed with him where you learned to  
8 lift the flap for air during the sweat lodge  
9 ceremony?

10 A. **No, I don't.**

11 Q. Let me direct your attention to page 7,  
12 lines 13 to 17.

13 A. **Okay.**

14 Q. Do you see where Lieutenant Boelts asked  
15 you, did anyone tell you beforehand that hey, if  
16 you have trouble, lift up the deal between rounds,  
17 and you can get cool air?

18 And you responded, no.

19 And Lieutenant Boelts said, you just  
20 figured that out on your own?

21 And you said, yes.

22 A. **Yes.**

23 Q. Did you learn that on your own, or did  
24 you learn to lift the flap from someone else?

25 A. **I learned to lift the flap from someone**

1 **else.**

2 Q. And do you know why you told  
3 Lieutenant Boelts that you figured it out on your  
4 own?

5 A. **Because I didn't want to keep talking to**  
6 **him.**

7 Q. Do you recall being asked by  
8 Lieutenant Boelts, for the 2009 ceremony, when did  
9 you realize people were in distress?

10 A. **No.**

11 Q. Do you recall telling Lieutenant Boelts  
12 that you first realized people were in distress  
13 after the ceremony was over?

14 A. **I'm not sure. I'd have to look at the**  
15 **transcript.**

16 Q. Let me direct your attention to page 8,  
17 lines 13 to 28.

18 A. **Okay.**

19 Q. Does that refresh your recollection?

20 A. **Yes.**

21 Q. Do you recall when it was that you -- do  
22 you recall what you told Lieutenant Boelts about  
23 when you realized people were in distress?

24 A. **Just that when I crawled out, I saw James**  
25 **Shore.**

1 MR. KELLEY: Your Honor, I believe the witness  
2 has refreshed his memory by reading the transcript  
3 of Exhibit 602, and I'd ask it be read word for  
4 word to the jury.

5 THE COURT: All right.

6 Ms. Polk, any response?

7 MS. POLK: Your Honor, may I ask this witness  
8 a question first?

9 THE COURT: You may, but the passage should be  
10 read word for word.

11 MS. POLK: We can do that.

12 Q. Mr. Rock, looking at page 8, beginning on  
13 line 13, Lieutenant Boelts asked you, when was the  
14 first you realized that people were in distress?

15 And you replied, when I -- when I got out  
16 of the sweat lodge and I exited to my left, and I  
17 was -- you know -- when you get out of the sweat  
18 lodge, they're hosing you down because you need to  
19 close your pores.

20 And he said, yeah?

21 And then you said, so I exited to my  
22 left. I looked over behind that side of the sweat  
23 lodge, and James Shore was lying there, and they  
24 were giving him CPR.

25 Lieutenant Boelts asked, and that was as

1 soon as you exited the sweat lodge?

2 And you said, yeah. Well -- you know --  
3 I mean, in the sequence of events of crawling out  
4 of the sweat lodge, my focus was to crawl out of  
5 the sweat lodge. It wasn't looking around to see  
6 where others were.

7 And so I crawled out of the sweat lodge.  
8 And people were exit -- kind of moving to the  
9 right, and so there was more space. So I moved to  
10 the left. You know, it was maybe, I don't know --  
11 you know -- the time.

12 Was it five minutes?

13 I don't know.

14 Ten minutes?

15 I don't know what it was. It was soon  
16 afterwards.

17 A. **Okay.**

18 Q. Did you realize people were in distress  
19 before you existed the sweat lodge?

20 A. **I realized it? Yes.**

21 Q. And, again, what did you realize?

22 A. **The memory that came back to me when I**  
23 **was crawling out was -- and I testified to this the**  
24 **other day -- that I saw Kirby Brown, her feet, she**  
25 **wasn't moving. But I just kept going. There is**

1 **nothing I could do. I just had to get out of**  
2 **there.**

3 **Q.** Do you recall whether Lieutenant Boelts  
4 asked you if you had heard anyone say, you may feel  
5 like you're going to die, but you're going to be  
6 okay?

7 **A. I'm sure he did. I don't know where.**

8 **Q.** Do you recall telling Lieutenant Boelts  
9 that you never heard anybody say that?

10 **A. Right at this moment? No, I don't.**

11 **Q.** Let me direct your attention to page 9,  
12 line 26 through 28, and page 10, lines 1 to 7.

13 **A. Okay.**

14 **Q.** And specifically looking at page 9,  
15 line 26, Lieutenant Boelts asked you, did you ever  
16 hear James Ray or anybody else make any statements  
17 about hey, you can get through this? This is  
18 tough? You've got to persevere?

19 And you said, not like that. No. I know  
20 from experience the year before that when you leave  
21 the sweat lodge during the event, you're welcome to  
22 come back.

23 Lieutenant Boelts said, huh-huh.

24 And then you said, I strangely remember  
25 him saying that people could come back in, like,

1 hey. Come on back in. And -- you know -- like  
2 that type of thing.

3 Lieutenant Boelts said, okay. You -- did  
4 you -- you never -- or did you ever hear anybody  
5 say anything about hey, you may feel like you're  
6 going to die, but you're going to be okay?

7 And you said, no.

8 **A. Okay.**

9 **Q.** Did you ever hear Mr. Ray make a  
10 statement, you may feel like you're going to die,  
11 but you're going to be okay?

12 **A. Yes.**

13 **Q.** And when did you hear that statement?

14 **A. In 2008 and 2009.**

15 **Q.** And specifically when?

16 **A. Before the sweat lodge in the Crystal**  
17 **Hall.**

18 **Q.** And what do you recall him saying?

19 **A. That you're going to feel like you're**  
20 **going to die, but -- you're going to feel like**  
21 **you're going to die. It's going to be really hot.**  
22 **It's going to feel like your skin is going to burn**  
23 **off. And if you pass out, we'll drag you out by**  
24 **your feet afterwards.**

25 **Q.** Why did you tell Lieutenant Boelts on

1 October 29 that you had never heard a statement  
2 like that?

3 **A. Because I wanted to get off the phone. I**  
4 **was starting to feel really, really bad.**

5 **Q.** Mr. Rock, directing your attention again  
6 to Exhibit 1069, which the order of use immunity  
7 signed by the Court.

8 **A. Yes. Okay.**

9 **Q.** You understand that use immunity does not  
10 protect you from giving false testimony today, last  
11 week, or in any court proceeding?

12 **A. Yes.**

13 **Q.** I want to move on now to -- back to 2009  
14 and the ceremony that -- the jury has heard  
15 testimony about a ceremony that occurred after -- a  
16 couple days after the sweat lodge in 2009.

17 **A. Yes.**

18 **Q.** And if I can pull a couple of pictures.  
19 Couple other questions.

20 You had testified last week, Mr. Rock,  
21 about a saging --

22 **A. Yes.**

23 **Q.** -- that you performed on some of the  
24 participants?

25 **A. Yes.**

1 **Q.** Can you tell the jury what the sage  
2 looked like that you used.

3 **A. It was sage that was dried. And it was**  
4 **tied up in a bundle. So it looked like a big**  
5 **bundle, cigar type thing. And the end was lit.**  
6 **And blow out the flame, and it would smoke.**

7 **Q.** Do you recall how many participants you  
8 personally saged?

9 **A. A third of them maybe. It would be a**  
10 **guess. I could not recall -- no -- exactly how**  
11 **many.**

12 **Q.** Did you breathe any of the smoke from the  
13 sage yourself as you were saging?

14 **A. Yes. I smelled the smoke. Yes.**

15 **Q.** And did it make you sick in any way?

16 **A. No.**

17 **Q.** For the participants that you saged, did  
18 you observe whether anybody got sick from the  
19 saging?

20 **A. No. I did not.**

21 **Q.** Inside the sweat lodge -- I believe  
22 actually I've asked you this question already, but  
23 I just want to make sure. You talked about the  
24 positions of yourself, Sean Ronan, Kirby Brown, and  
25 James Shore.

1 **A. Yes.**  
 2 **Q.** With respect to yourself, were you face  
 3 up or face down?  
 4 **A. I was face down.**  
 5 **Q.** And where was your face when you were  
 6 face down?  
 7 **A. I would turn it to the left or the right.**  
 8 **Q.** How close to the dirt were you?  
 9 **A. As close as I could get my nose and mouth**  
 10 **to the dirt, because that's where any type of**  
 11 **oxygen was.**  
 12 **Q.** And how many rounds did you have your  
 13 face in the dirt that close?  
 14 **A. I would say that would be six rounds.**  
 15 **Q.** Did you ever get sick from having your  
 16 face in the dirt?  
 17 **A. From having my face in the dirt?**  
 18 **Q.** Yes.  
 19 **A. I wouldn't say that's why I got sick or**  
 20 **felt ill or felt bad.**  
 21 **Q.** What made you feel ill?  
 22 **A. The heat.**  
 23 **Q.** And how did you -- how you felt in 2009  
 24 as a result of the heat, how did that compare to  
 25 what you felt in 2008?

1 **A. My recollection today is it was hotter.**  
 2 **Q.** And in terms of how you felt yourself  
 3 when the ceremony was over in 2008, how did that  
 4 compare with how you felt in 2009?  
 5 **A. There was no comparison. In 2009 I was**  
 6 **completely weak and unable to barely crawl out of**  
 7 **that sweat lodge.**  
 8 **Q.** What was the total number of rounds that  
 9 you were inside the sweat lodge in 2008?  
 10 **A. Well, there were seven rounds, and I was**  
 11 **out two of them. So that would be five.**  
 12 **Q.** And in 2009 what do you believe the total  
 13 number of rounds to be?  
 14 **A. Eight.**  
 15 **Q.** Are you able to recall the length of time  
 16 of the ceremony in 2008 in terms of minutes or  
 17 hours?  
 18 **A. I thought it was a couple hours at the**  
 19 **time.**  
 20 **Q.** And how about 2009?  
 21 **A. I know it was at least two hours. It**  
 22 **felt -- I thought it was even more. I thought it**  
 23 **was two, 15; two, 15; two and a half hours.**  
 24 **Q.** The last time you saw Kirby Brown, do you  
 25 recall if she was face up or face down inside the

1 sweat lodge?  
 2 **A. She was face up.**  
 3 **Q.** And the last time you saw James Shore  
 4 inside the sweat lodge, do you recall if he was  
 5 face up or face down?  
 6 **A. As I testified, he was on his knees and**  
 7 **his elbows parallel to the sweat lodge -- to the**  
 8 **pit.**  
 9 **Q.** And which way was his face pointing?  
 10 **A. Towards me.**  
 11 **Q.** Would his head have been facing the  
 12 ground or his head facing the ceiling? His face I  
 13 mean.  
 14 **A. I'm speaking of that I spoke to him. And**  
 15 **so he turned his head, looked up at me. That's the**  
 16 **last time I remember speaking to him or seeing him.**  
 17 **So that's the position.**  
 18 **Q.** I just have a couple more questions,  
 19 Mr. Rock. You testified last week that you saw  
 20 both Kirby Brown and James Shore strapped on -- I  
 21 believe you called them "stretchers" or "gurneys"?  
 22 **A. Yes.**  
 23 **Q.** With respect to Kirby Brown, do you  
 24 recall if she was face up or face down on the  
 25 stretcher?

1 **A. She was face up.**  
 2 **Q.** With respect to James Shore, do you  
 3 recall if he was face up or face down on the  
 4 stretcher?  
 5 **A. He was face up.**  
 6 **Q.** The conversation that you've testified  
 7 about Mr. Shore that you heard inside the sweat  
 8 lodge when you heard someone say, I think she's in  
 9 trouble; she needs to get out; and you heard  
 10 Mr. Ray respond we're closing the gate, and we'll  
 11 deal with that after this round -- did you ever  
 12 hear Mr. Ray inquire about Kirby Brown after he  
 13 made that comment?  
 14 **A. No.**  
 15 **Q.** Did you ever see Mr. Ray come over and  
 16 check up on Kirby Brown after you heard him make  
 17 that statement -- make that statement?  
 18 **A. No.**  
 19 **Q.** Do you know how many rocks were used in  
 20 the ceremony in 2009?  
 21 **A. Total? No. Well, no. I'm sorry. I do**  
 22 **know because of ceremony that was afterwards. Yes.**  
 23 **Q.** I'm going to show you some of the  
 24 pictures of the ceremony. I don't know if you've  
 25 seen them before. They're all admitted. They are

1 exhibits 237 -- you can flip those over.

2 **A. Uh-huh.**

3 **Q. 236, 235, 234, 233, 232 and 231.**

4 First of all, do you recognize those

5 photographs?

6 **A. Yes.**

7 **Q. And what do you recognize them to be?**

8 **A. The photographs of the day we took the**  
9 **skeleton of the sweat lodge down.**

10 **Q. And were you part of that ceremony?**

11 **A. Yes.**

12 **Q. You testified a moment ago the issue of**  
13 **the number of rocks in 2009. How does the ceremony**  
14 **that involved taking down the sweat lodge -- how**  
15 **does that relate to your knowledge of the number of**  
16 **rocks used in 2009?**

17 **A. Because the rocks that were there in the**  
18 **pit, we took them out and we counted them. And I**  
19 **believe there were 53, 54, somewhere in that area.**

20 **Q. And do you know how many rocks were used**  
21 **in 2008 from Mr. Ray's sweat lodge ceremony?**

22 **A. No, I don't.**

23 **Q. Do you know whether more rocks were used**  
24 **in 2009 than 2008?**

25 **A. I believe more rocks were used in 2009.**

1 **Q. And what is your basis for that belief?**

2 **A. My basis for that belief is that what I**  
3 **recall is that he called for more rocks earlier on**  
4 **in 2009, and the numbers, I feel, stayed higher**  
5 **in 2009.**

6 **Q. Throughout each round?**

7 **A. Yes.**

8 **Q. Does your belief about more rocks being**  
9 **used in 2009 than 2008 -- does that affect your**  
10 **belief as to it being hotter in 2009?**

11 **A. Absolutely.**

12 **Q. And how so?**

13 **A. Well, there is many, many reasons why I**  
14 **think that it was hotter.**

15 **Q. And what are they?**

16 **A. Recalling how hot it was, just being in**  
17 **there, recalling that I lifted the edge for**  
18 **probably six rounds compared to what I did in 2008,**  
19 **the fact that three people died, the fact that more**  
20 **people were laying down and ill and didn't recover.**  
21 **That's why I believe it was hotter.**

22 **Q. The ceremony that occurred a couple of**  
23 **days later -- do you recall what date it occurred**  
24 **on, by the way?**

25 **A. The ceremony?**

1 **Q. Yes. The ceremony where you took down**  
2 **the sweat lodge and burned it.**

3 **A. That would have been Saturday, I believe**  
4 **it to be.**

5 **Q. I'm going to put up on the overhead**  
6 **Exhibit 232.**

7 Do you see yourself in this photograph?

8 **A. Yes, I do.**

9 **Q. Will you show the jury where you are.**

10 **A. Right there.**

11 **Q. Did you participate in the entire**  
12 **ceremony that day?**

13 **A. Yes.**

14 **Q. How many hours were you out there?**

15 **A. I mean, I didn't keep time on it. It was**  
16 **probably at least two, three hours, I believe it to**  
17 **be.**

18 **Q. And I'm going to put up on the overhead**  
19 **Exhibit 236.**

20 When you were burning the parts of the  
21 sweat lodge frame that you burned, did you get  
22 close to the smoke?

23 **A. Yeah. I was putting the sticks in there.**

24 **Q. And did it ever make you sick?**

25 **A. No, it did not.**

1 **Q. And do you see yourself in this**  
2 **photograph?**

3 **A. Yes, I do.**

4 **Q. Will you show the jury where you are.**

5 **A. I'm right there. That's my arm. That's**  
6 **me.**

7 **Q. Was it an emotional ceremony for you?**

8 **A. Yeah. Very.**

9 **Q. Thank you, Mr. Rock.**

10 Thank you, Your Honor.

11 THE COURT: Thank you, counsel.

12 We'll take a few-minute recess. Resume  
13 in just about five minutes, ladies and gentlemen.

14 Remember the admonition.

15 Thank you.

16 (Recess.)

17 THE COURT: The record will show the presence  
18 of Mr. Ray, the attorneys, the jury. Mr. Rock is  
19 on the witness stand.

20 Mr. Kelly, you can proceed.

21 MR. KELLY: Thank you, Judge.

22 CROSS-EXAMINATION

23 BY MR. KELLY:

24 **Q. Mr. Rock, I'm going to ask you to please**  
25 **take a look at Exhibit 362. It's in that stack to**

1 your right.

2 And, sir, you will have to look on the  
3 back of the exhibit. There is some really little  
4 numbers. Do you see those?

5 May I approach, Judge?

6 THE COURT: You may.

7 Q. BY MR. KELLY: I'll give you a hand here.  
8 This is 697, 1068.

9 You recall during -- are you doing okay  
10 now, Mr. Rock?

11 A. **Doing as best as I can.**

12 Q. Okay. I'd ask you to take a look at  
13 Exhibit 602, page 10, line 5. And to refresh the  
14 jury's recollection, this is a telephonic interview  
15 between you and Lieutenant Boelts on October 29,  
16 2009; correct?

17 A. **Yes.**

18 Q. And Lieutenant Boelts asked you a  
19 question on line 5. And I'm reading it. Okay.  
20 You -- did you -- you never -- or did you hear  
21 anybody say anything about hey, you may feel like  
22 you're going to die, but you're going to be okay?

23 What was your response?

24 A. **My response is no.**

25 Q. And you told the jury a moment ago that

98

1 you lied in that response because, quote, I wanted  
2 to get off the phone. I was feeling really, really  
3 bad. Correct?

4 A. **No. Those weren't my exact words.**

5 Q. Okay. Is that the substance of your  
6 testimony a few minutes ago?

7 A. **Well, I can't testify that that was my  
8 exact words. So I need to explain that.**

9 Q. I'm going to rephrase my question. On  
10 October 29, 2009, in response to that question, you  
11 did not tell the lieutenant the truth; correct?

12 A. **No. I did not tell him -- no.**

13 Q. So that was a lie; correct?

14 A. **It was not the truth.**

15 Q. If you would please take a look at  
16 page 8, line 13.

17 A. **Okay.**

18 Q. The lieutenant asked the question, when  
19 was the first you realized that people were in  
20 distress?

21 And your response was, when I got out of  
22 the sweat lodge. Correct?

23 A. **Which line is that?**

24 Q. Line 14 right after line 13.

25 A. **Yes.**

1 Q. And, again, Mr. Rock, my point is that  
2 was not the truth; correct?

3 A. **No. That was the truth as far as I  
4 remembered at that time.**

5 Q. You want this jury to believe that now,  
6 some 19 months later, your memory is better than it  
7 was approximately one month after the interview  
8 with Lieutenant Boelts; correct?

9 A. **Yes. Because I've been diagnosed with  
10 post-traumatic stress syndrome within the last  
11 eight weeks.**

12 Q. On page 5, line 17, Lieutenant Boelts  
13 says, I hope you're feeling better than I am.

14 And your response was, well, I feel great  
15 actually. Correct?

16 A. **Correct.**

17 Q. And that was not the truth; correct?

18 A. **No. At that moment that was the truth  
19 for that moment.**

20 Q. On page 3, line 17, Lieutenant Boelts  
21 asked you, how are you feeling, by the way?

22 And what was your response?

23 A. **Great.**

24 Q. And that was not the truth. Is that your  
25 testimony?

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1 A. **No. At that moment I was feeling good.**

2 Q. On page 6, line 24, Lieutenant Boelts  
3 asks you, did you hear anybody say anything about  
4 turn out a light or anything like that?

5 You responded, turn out a light?

6 He further questions you, turn out the  
7 light or turn off the light or who brought the  
8 light in or anything of that nature?

9 If you turn the page to page 7, line 1,  
10 what was your response?

11 A. **No. I didn't hear anything in that  
12 regard. No.**

13 Q. No. I didn't hear anything in that  
14 regard. No. Correct?

15 A. **That's what I just said.**

16 Q. And is that a lie?

17 A. **I think I was confused. And I stated  
18 that earlier.**

19 Q. On page 7, line 13, a few seconds later  
20 the lieutenant asked you, did anybody tell you  
21 beforehand that, hey, if you have trouble -- you  
22 know -- lift up the deal in between rounds, and you  
23 can get cool air?

24 And your response was no; correct?

25 A. **My response was no. Yes.**

1 Q. Was that a lie?

2 A. **Well, I have to explain that. I can't**

3 **answer.**

4 Q. Lieutenant Boelts on page 7, line 18,

5 asks, was there talking in between rounds at all?

6 You respond by saying, talking?

7 He says, just normal conversation.

8 And you respond, no. I don't -- not --

9 no. Not really. Not that I remember. Not

10 anything.

11 Did I read that correctly?

12 A. **Yes.**

13 Q. Is that a lie?

14 A. **I didn't remember. No. I didn't**

15 **remember.**

16 Q. On October 29, 2009, 20 days after the

17 sweat lodge, these were your responses; correct?

18 A. **Yes.**

19 Q. You didn't go to the hospital on

20 October 8, 2009; correct?

21 A. **No, I did not.**

22 Q. Didn't seek any medical attention between

23 October 8 and October 29, 2009; correct? That's

24 correct; right?

25 A. **Correct.**

1 Q. On page 8, line 13, Lieutenant Boelts

2 asked you, when was the first you realized that

3 people were in distress?

4 And you responded, when I got out of the

5 sweat lodge. Correct?

6 A. **Correct.**

7 MS. POLK: Your Honor, pursuant to Rule 108,

8 the state would ask that lines 18 through 28 be

9 read by counsel.

10 THE COURT: If it's the same topic, Mr. Kelly.

11 MR. KELLY: And I was asking for a response as

12 to that specific question, Judge. I'm not sure if

13 he responded.

14 THE COURT: Let's start again, Mr. Kelly.

15 Q. BY MR. KELLY: I read that correctly --

16 right? -- Mr. Rock? When you first realized people

17 were in distress, you said, when I got out of the

18 sweat lodge; correct?

19 A. **Yes. That's what I said.**

20 Q. Pursuant to Ms. Polk's request, further

21 on if you please look at Exhibit 602, you also

22 stated, so I exited to my left, and I looked over

23 behind that side of the sweat lodge. And James

24 Shore was laying there, and they were giving him

25 CPR. Correct?

1 A. **Correct.**

2 Q. And then the detective asks you the

3 question: And that was as soon as you exited the

4 sweat lodge or -- and why don't you just read the

5 jury your response.

6 A. **Where is that? I'm sorry.**

7 Q. Lieutenant Boelts's question was line 20.

8 And that was as soon as you exited the sweat lodge

9 or --

10 And what was your response in that

11 paragraph?

12 A. **Line 21 you want me to read?**

13 Q. Yes.

14 A. **It says, yeah. Well -- you know -- I**

15 **mean, in the sequence of events crawling out of the**

16 **sweat lodge, my focus was to crawl out of the sweat**

17 **lodge. It wasn't looking around to see where**

18 **others were. And so I crawled out of the sweat**

19 **lodge. And people were exit -- kind of moving to**

20 **the right. And so there was some more space, so I**

21 **moved to the left. You know, it was maybe -- I**

22 **don't know -- you know -- the time.**

23 **Was it five minutes?**

24 **I don't know.**

25 **Ten minutes?**

1 **I don't know. But it was as soon**

2 **afterwards.**

3 **Yes.**

4 Q. You told Lieutenant Boelts the first time

5 you noticed anyone in distress was after you had

6 exited the sweat lodge; correct?

7 A. **Yes.**

8 Q. You provide some time frames. You don't

9 know whether it was 5 minutes. You don't know

10 whether it was 10 minutes. But it was soon after

11 you exited the sweat lodge; correct?

12 A. **Yes. That's what I said.**

13 Q. And on page 1, line 27, in response to

14 the question by Lieutenant Boelts, how did it

15 compare as far as the heat and the number of

16 people, you stated the heat felt the same; correct?

17 A. **Yes.**

18 Q. And he was making a comparison between

19 your previous experience in 2008 with your

20 experience in 2009; correct?

21 A. **Yes.**

22 MS. POLK: Your Honor, pursuant to Rule 106,

23 the state would request that the remainder of the

24 answer -- it would be page 2, lines 1 through 3 --

25 be read.

1 THE COURT: It's actually the rest of the  
 2 answer, Mr. Kelly.  
 3 MR. KELLY: Judge, I don't think it is. We've  
 4 been through this.  
 5 Q. Turn the page, Mr. Rock, please, to  
 6 page 2.  
 7 A. **I'm on page 2.**  
 8 Q. And you further stated, then, the number  
 9 of people was less; correct?  
 10 A. **Yes.**  
 11 Q. And what's you're talking about is there  
 12 was fewer number of people in 2009 than 2008;  
 13 correct?  
 14 A. **That attended the event.**  
 15 Q. Right. Approximately 70 people were in  
 16 the sweat lodge in 2008; correct?  
 17 A. **Yes. Initially.**  
 18 Q. Now, sir, I've asked you a series of  
 19 questions about your responses provided to the  
 20 lieutenant back on October 29 of 2009; correct?  
 21 A. **Correct.**  
 22 Q. And you knew in the very first statement  
 23 when the lieutenant says, my name is Tom Boelts.  
 24 I'm a sergeant with the Yavapai County Sheriff's  
 25 Office. How are you doing, sir?

1 You said, I'm doing fine. Correct?  
 2 A. **Yes.**  
 3 Q. And you knew that he was a law  
 4 enforcement agent; correct?  
 5 A. **I can't recall. I stated that -- I**  
 6 **stated that I believe that he gave me a number to**  
 7 **call back to verify it.**  
 8 Q. You want to take a look at Exhibit 602  
 9 and refresh your recollection? Did the lieutenant  
 10 say, I'm a sergeant with the Yavapai County  
 11 Sheriff's Office? How are you doing, sir?  
 12 A. **Okay.**  
 13 Q. Are you telling this jury now that --  
 14 that you were in such mental distress that you  
 15 don't even recall that a police officer called you  
 16 on October 29?  
 17 A. **No. I recall a police officer called me.**  
 18 Q. And he identified himself by name and  
 19 rank; correct?  
 20 A. **Well, I guess he did. Yeah.**  
 21 Q. And we went through a series of six or  
 22 seven questions about the truthfulness of your  
 23 responses to the lieutenant during the past 10  
 24 minutes; correct?  
 25 A. **Yes.**

1 Q. And you agreed with me that at least one  
 2 of those statements was not the truth; correct?  
 3 A. **Correct.**  
 4 Q. And perhaps several are not the truth;  
 5 correct?  
 6 A. **I don't know. I don't know.**  
 7 Q. Well, what you do know is --  
 8 May I approach?  
 9 THE COURT: Yes.  
 10 Q. BY MR. KELLY: Let me hand you what's  
 11 been marked and admitted as Exhibit 1069. That is  
 12 an immunity agreement offered by the State of  
 13 Arizona for your testimony; correct?  
 14 A. **Yes.**  
 15 Q. It says you can lie on the witness stand,  
 16 and you will not be prosecuted for that lie;  
 17 correct?  
 18 MS. POLK: Your Honor, objection. That is a  
 19 misstatement of the agreement.  
 20 THE COURT: Sustained.  
 21 Q. BY MR. KELLY: Is it you're understanding  
 22 that you will not be prosecuted for lying on the  
 23 witness stand as it relates to information directly  
 24 or indirectly derived from such testimony or  
 25 evidence -- shall not be used against Mark Rock in

1 any proceeding or prosecution for a crime or  
 2 offense concerning which he gave an answer or  
 3 produced evidence under court order?  
 4 MS. POLK: Your Honor, objection to the first  
 5 part of that question. It was a misstatement.  
 6 THE COURT: Sustained.  
 7 MR. KELLY: May I publish 1069?  
 8 THE COURT: You may.  
 9 Q. BY MR. KELLY: This is a copy of 1069,  
 10 the actual exhibit you have in front of you.  
 11 Correct, Mr. Rock?  
 12 A. **Yes.**  
 13 Q. And last Friday your testimony was  
 14 interrupted because Judge Darrow provided you an  
 15 attorney to consult with you; correct?  
 16 A. **Correct.**  
 17 Q. His name was Bob Launders; correct?  
 18 A. **Correct.**  
 19 Q. Mr. Launders was provided a lot of  
 20 information in this case to review; correct?  
 21 A. **I believe that to be true from what he**  
 22 **said.**  
 23 Q. He was provided the October 8, 2009,  
 24 interview you provided to Detective Parkinson (sic  
 25 throughout); correct?

1 **A. Correct.**

2 **Q.** He was provided a copy of the October 29,  
3 2009, interview you gave to Lieutenant Boelts;  
4 correct?

5 **A. He told me he was. Yes.**

6 **Q.** He was provided a copy of the  
7 September 16, 2010, interview you provided to  
8 Detective Diskin; correct?

9 **A. I'm sorry. No. What was that?**

10 **Q.** If you don't know, that's fine. Do you  
11 know if he was provided a copy of your sworn  
12 testimony under oath in front of Judge Darrow on  
13 November 16, 2010?

14 **A. I believe he said he was. I'm not sure.**

15 **Q.** And then he also provided a copy of your  
16 testimony from last Friday morning; correct?

17 **A. He said he was. Yes.**

18 **Q.** Then he consulted with you on three,  
19 maybe four, occasions prior to today; correct?

20 **A. Correct.**

21 **Q.** And as a result of those consultations,  
22 our county attorney offered you use immunity in  
23 return for your testimony?

24 **MS. POLK:** Your Honor, objection. That  
25 misstates. I had no consultations with

1 Mr. Launder.

2 **MR. KELLY:** I'll restate my question.

3 **Q.** Mr. Rock, take a look at Exhibit 1069.  
4 Does it say in the first paragraph, upon reading  
5 the state's petition for use immunity?

6 **A. Yes.**

7 **Q.** The State of Arizona; correct?

8 **A. Yes. I believe it to be the State of**  
9 **Arizona.**

10 **Q.** Our county attorney, the politician,  
11 Sheila Polk, represents Yavapai County?

12 **MS. POLK:** Objection.

13 **THE COURT:** Sustained. Form of the question.

14 **Q.** BY MR. KELLY: I'm rephrasing. Mr. Rock,  
15 you resided here in Yavapai County from August 7,  
16 2010, for a several-month time period; correct?

17 **A. Yes. I was here during that time period.**

18 **Q.** During that time period did you know that  
19 Sheila Polk is our elected county attorney?

20 **A. No, I did not.**

21 **Q.** Did you know that the county attorney is  
22 the one that decides who to prosecute?

23 **A. I didn't know who it was exactly. No.**

24 **Q.** Do you know whether a county attorney is  
25 the individual who decides what to present to the

1 Yavapai County Grand Jury?

2 **A. Somebody from that office. Yes.**

3 **Q.** And in this particular case, after  
4 consultation with your attorney, you have now in  
5 front of you Exhibit 1069?

6 **A. Okay.**

7 **Q.** Which is signed by Judge Darrow; correct?

8 **A. Correct.**

9 **Q.** It says, upon reading the state's  
10 petition for use immunity and good cause appearing;  
11 correct?

12 **A. I'm sorry. I couldn't hear you. You**  
13 **were --**

14 **Q.** Mumbling?

15 **A. Mumbling. Yes.**

16 **Q.** Upon reading the state's petition for use  
17 immunity, and good cause appearing, it's hereby  
18 ordered, No. 1, that Mark Rock has use immunity to  
19 testify at trial in the above-entitled case;  
20 correct?

21 **A. That is correct what it says.**

22 **Q.** Number 2, that you're required to  
23 testify; correct?

24 **A. Correct.**

25 **Q.** And my previous question, that any

1 information directly or indirectly derived from  
2 such testimony or evidence shall not be used  
3 against Mark Rock in any proceeding or prosecution  
4 for a crime or offense concerning which he gave  
5 answer or produced evidence under court order;  
6 correct?

7 **A. Correct.**

8 **Q.** You met Fawn Foster when you were  
9 residing at Angel Valley; correct?

10 **A. Yes.**

11 **Q.** Did you know that Fawn Foster has been  
12 twice convicted or providing false information to a  
13 police officer?

14 **A. No, I did not.**

15 **Q.** Do you know that if, in fact, you lied to  
16 Detective Diskin, Lieutenant Boelts or  
17 Detective Parkinson, that you could be prosecuted  
18 for the crime of providing false information to the  
19 police officer?

20 **A. Could you restate that.**

21 **Q.** I asked you a question as to whether or  
22 not you knew that you could be prosecuted for the  
23 crime of providing false information to a police  
24 officer if you lied to that police officer during  
25 an interview.

1 **A. I was told that by my lawyer. Yes.**  
 2 **Q.** And that, further, this use immunity does  
 3 not except the crime of perjury; correct?  
 4 **A. Correct.**  
 5 **Q.** And the paragraph says, except as  
 6 provided in that statute, 13-4064, you may  
 7 nevertheless be prosecuted or subjected to penalty  
 8 of forfeiture for any perjury, false swearing or  
 9 contempt, committing in answering or failing to  
 10 answer or in producing or failing to produce  
 11 evidence in accordance with this order; correct?  
 12 **A. Yes. You read it correctly.**  
 13 **Q.** And Mr. Launders explained to you what  
 14 that meant, didn't he?  
 15 **A. Yes.**  
 16 **Q.** Now, you understand -- you have a belief  
 17 that Ms. Polk is not going to prosecute for  
 18 anything you say on the witness stand; correct?  
 19 **A. I couldn't be absolutely sure of that.**  
 20 **No.**  
 21 **Q.** You've been testifying for almost a day  
 22 now about your beliefs and feelings as they relate  
 23 to your opinions and your testimony. So my  
 24 question right now is do you have a belief that  
 25 Ms. Polk is not going to prosecute you regardless

1 of what you say on the witness stand? Is that your  
 2 belief?  
 3 **A. Right at this moment is what you're**  
 4 **asking?**  
 5 **Q.** Yes.  
 6 **A. I would hope she wouldn't.**  
 7 MR. KELLY: May we take a lunch break?  
 8 THE COURT: Yes.  
 9 This is the time, ladies and gentlemen.  
 10 We will take the noon recess at this time. Of  
 11 course, remember the admonition.  
 12 Mr. Rock, remember the rule of exclusion  
 13 I've discussed with you before.  
 14 Reassemble at 1:30.  
 15 Thank you.  
 16 (Recess.)  
 17 THE COURT: The record will show the presence  
 18 of Mr. Ray, the attorneys, the jury. Mr. Rock has  
 19 returned to the witness stand.  
 20 Mr. Kelly, you may continue.  
 21 MR. KELLY: Thank you, Judge.  
 22 **Q.** Mr. Rock, right before the lunch break,  
 23 we were discussing your interview of October 29  
 24 with Lieutenant Boelts. As you sit here today on  
 25 June 1st, 2011, I understand you have an

1 explanation in regards to why some of your answers  
 2 are inconsistent. Correct?  
 3 **A. Yes.**  
 4 **Q.** And that explanation is, if I understand  
 5 you correctly, that at the time you made the  
 6 October 29 statement, you were in an altered state?  
 7 **A. In an altered state on the 29th?**  
 8 **Q.** Yes, sir.  
 9 **A. I don't understand.**  
 10 **Q.** It's a question. Were you in a slightly  
 11 altered state when you made the statement to  
 12 Lieutenant Boelts on October 29, 2009?  
 13 **A. I said that I've been suffering from**  
 14 **post-traumatic stress syndrome.**  
 15 **Q.** We'll get to that. The first question is  
 16 do you believe you're in an altered state during  
 17 that telephone conversation?  
 18 **A. Not the same type of altered state that I**  
 19 **experienced at a James Ray event. No.**  
 20 **Q.** And were you suffering from extreme  
 21 distress during the October 29, 2009, telephone  
 22 conversation?  
 23 **A. As it went on, I got very distressed.**  
 24 **Q.** And were you in shock during that  
 25 telephone conversation of October 29?

1 **A. I was -- I don't know -- not the same**  
 2 **type of shock I was in after the sweat lodge. No.**  
 3 **Q.** You were in some form of shock. Is that  
 4 your testimony?  
 5 **A. No. I don't know what shock is in that**  
 6 **time period.**  
 7 **Q.** Then you mentioned just a second ago that  
 8 you believe you were suffering from post-traumatic  
 9 stress syndrome?  
 10 **A. Yes.**  
 11 **Q.** What's your understanding of the impact  
 12 of PTSD on your October 29, 2009, statement?  
 13 **A. I was distraught and very -- I became**  
 14 **distraught, and I can't deal with issues. I can't**  
 15 **deal with stuff.**  
 16 **Q.** I take it by implication, all this is as  
 17 a result of you being in the sweat lodge on  
 18 October 8, 2009?  
 19 **A. Yes.**  
 20 **Q.** And you didn't suffer any of these mental  
 21 health infirmities prior to that date; correct?  
 22 **A. Correct.**  
 23 **Q.** Now, so you said you were distraught.  
 24 Were you crying during that interview?  
 25 **A. No. I wasn't crying. No.**

1 Q. Were you emotional during the interview?

2 A. **I was emotional inside.**

3 MR. KELLY: Your Honor, I'd ask Exhibit 600 be  
4 played for the jury, demonstrative purposes.

5 THE COURT: Ms. Polk?

6 MS. POLK: Your Honor, the state would object  
7 at this time. There has been -- I'm not sure what  
8 the demonstrative purposes are and what the basis  
9 is for playing the entire interview.

10 THE COURT: How long is the interview,  
11 Mr. Kelly?

12 MR. KELLY: This interview, Judge, is 23  
13 minutes.

14 THE COURT: Overruled. I'm going to permit it  
15 to be played.

16 MR. KELLY: It may take just a second to cue  
17 it up, Judge.

18 (Exhibit 600 played.)

19 MS. POLK: Your Honor, there are some things  
20 being played that are really not relevant to what  
21 the defense has purported.

22 MR. KELLY: Judge, I believe what it is is  
23 Lieutenant Boelts making several telephone calls  
24 trying to find out if someone is home, the  
25 individual he wishes to interview. That is the

1 background information. I apologize.

2 THE COURT: Is it to the interview now?

3 MS. DO: Yes.

4 MR. KELLY: Yes.

5 (Exhibit 600 played.)

6 Q. BY MR. KELLY: So, Mr. Rock, again, you  
7 just told this jury that you made that statement  
8 while being distraught, very upset, suffering from  
9 PTSD; correct?

10 A. **At the time, yes. I was that way even**  
11 **though it didn't appear that way on the tape.**

12 Q. And you also were interviewed by the  
13 detectives back on October 8, 2009; correct?

14 A. **Correct.**

15 Q. And for reference, in front of you is  
16 Exhibit 697, which is a transcript of that  
17 interview. Do you have that in front of you?

18 A. **Yes.**

19 Q. And that interview took place during the  
20 evening of October 8?

21 A. **Right.**

22 Q. You told us last week, I believe, that  
23 you were probably one of the last ones to be  
24 interviewed. Correct?

25 A. **I believe I was at the end. Yes.**

1 Q. And that several hours had passed since  
2 the ending of the sweat lodge ceremony; correct?

3 A. **Yes.**

4 Q. And that this interview took place in the  
5 Crystal Hall, I believe. Correct?

6 A. **Took place in the dining hall.**

7 Q. In the dining hall. You had time between  
8 the end of the sweat lodge to drink water; correct?

9 A. **Yes. Drink water. Sure.**

10 Q. Did you have time to get something to  
11 eat?

12 A. **I don't recall eating anything. I'm not**  
13 **sure.**

14 Q. What about time to rest between the end  
15 of the sweat lodge and until you made this  
16 statement?

17 A. **I was in the dining hall with all the**  
18 **people.**

19 Q. And you told us, I believe, on direct  
20 that during the making of this statement you were  
21 in a slightly altered state. Correct?

22 A. **Yeah. Slightly altered state. Yes.**

23 Q. That you were suffering extreme distress;  
24 correct?

25 A. **It was very distressing. Yes.**

1 Q. That you were suffering from shock, was a  
2 word that you used, on October 8, 2009; correct?

3 A. **Yes. I felt I was in shock.**

4 Q. You also told us that some of the police  
5 during the interviews appeared to be annoyed?

6 A. **The way they were standing there.**

7 Q. Others appeared to be very compassionate?

8 A. **Right.**

9 Q. Some people were very upset -- other  
10 folks in the dining hall?

11 A. **Yeah. The whole time I was waiting.**  
12 **Yes.**

13 Q. And other folks were crying?

14 A. **I'd seen other people crying. Yes.**

15 Q. And during this interview, you offered an  
16 opinion as to the cause of this tragedy and told  
17 Detective Parkinson that the only thing that you  
18 could think of was some type of toxin; correct?

19 A. **Yes. That's what I said.**

20 Q. Carbon monoxide or something? I just  
21 simply don't know? Correct?

22 A. **I said that.**

23 Q. And that's what you thought on that day;  
24 correct?

25 A. **Well, I also said that I didn't know**

1 **because I'm not an expert.**

2 **Q.** And if you want to look at 697, page 13,  
3 the exact answer was -- and I'm referring to  
4 line 11, Mr. Rock -- the only thing I can think of  
5 is that there was some type of toxin that -- you  
6 know -- it was a toxin, carbon monoxide or  
7 something. I don't know.

8 **Correct?**

9 **MS. POLK:** Your Honor, pursuant to 106, I  
10 would ask that counsel read through line 16.

11 **MR. KELLY:** Judge, pursuant to 106, I'd ask  
12 that the entire audio, which is Exhibit 690, be  
13 played. It's 22 minutes in length. There are  
14 numerous references on direct to this conversation.  
15 I believe that's the best way to handle.

16 **THE COURT:** This particular answer would be  
17 completed by reading an additional two lines. I'd  
18 ask that be done.

19 **MR. KELLY:** I'll back up. Thank you, Judge.

20 **Q.** Mr. Rock, please take a look at page 13,  
21 line 11.

22 **A. Okay.**

23 **Q.** And you told Detective Parkinson on  
24 October 8, the day of the sweat lodge, the only  
25 thing I can think of is that there was some type of

1 toxic -- you know -- there was a toxin, carbon  
2 monoxide or something. I don't know.

3 **Detective Parkinson says, okay.**

4 **Then you said, I don't know how that**  
5 **would happen. I'm not -- I don't study that type**  
6 **of thing.**

7 **Correct?**

8 **A. Correct.**

9 **Q.** So you're not telling this jury or  
10 Detective Parkinson that you're a chemist or  
11 medical doctor, and simply that was your impression  
12 on October 8; true?

13 **A. Just off the top of my head.**

14 **MR. KELLY:** Judge, I would now ask pursuant to  
15 106 that the entire audio of this conversation,  
16 which is Exhibit 690, be played, 22 minutes in  
17 length.

18 **THE COURT:** Counsel, Mr. Kelly, Ms. Polk,  
19 please approach.

20 **(Sidebar conference.)**

21 **THE COURT:** Mr. Kelly, you're suggesting under  
22 106 that in order to have a fair presentation of  
23 part of it. But go ahead. Why are you urging the  
24 whole tape as admissible?

25 **MR. KELLY:** Judge, first of all, the majority

1 of the tape, a substantial majority of the tape,  
2 has been brought out on direct examination. There  
3 may be some de minimus aspect in terms of some  
4 factual information, but it's a very, very small  
5 portion of the tape.

6 **Under 106, which the objection I made**  
7 **during direct was to have it played to put into**  
8 **context to -- put into context the questions posed**  
9 **by the State of Arizona. Then in addition to that,**  
10 **similar to the last exhibit, this witness has**  
11 **testified that he was in extreme distress, he was**  
12 **this in shock, that you could hear people crying --**  
13 **or I'm sorry. That people were crying in the room,**  
14 **that people were upset in the room.**

15 **And so his tone and demeanor on the tape**  
16 **is relevant for purposes of impeachment. So for**  
17 **both of those reasons, and without making a**  
18 **speaking objection in front of the jury or speaking**  
19 **response, that's the basis of the request.**

20 **THE COURT:** Ms. Polk.

21 **MS. POLK:** Your Honor, the interview is  
22 hearsay. And there needs to be a specific purpose  
23 for why a statement is offered. And it would be  
24 because it's a prior inconsistent statement. To  
25 justify playing the entire interview under the idea

1 that it's impeachment or inconsistent statements, I  
2 think is not justified. Because Mr. Kelly can  
3 certainly ask him about individual statements and  
4 impeachment on a statement-by-statement basis.

5 **The suggestion by Mr. Kelly that he**  
6 **should be able to play this entire hearsay**  
7 **interview because the tone and demeanor, first of**  
8 **all, he hasn't confronted this witness about what**  
9 **his tone was. And this was just displayed through**  
10 **playing the last interview for demonstrative**  
11 **purposes.**

12 **It's been demonstrated that this**  
13 **witness's tone is a very low-key tone. There has**  
14 **been no foundation to establish somehow that the**  
15 **tone is relevant to anything.**

16 **And lastly, Your Honor, I would ask that**  
17 **if the Court is going to allow these prior**  
18 **interviews to be played, that pursuant to 106 the**  
19 **Court allow the interview on September 21st of 2010**  
20 **to be played, which is the third statement by this**  
21 **witness.**

22 **THE COURT:** Mr. Kelly.

23 **MR. KELLY:** Judge, it's clear it's admissible.  
24 Maybe Ms. Polk heard it differently than I did,  
25 contrasting his testimony today as to why the

1 statements are not truthful because he was  
2 extremely upset, he was in distress, he was in  
3 shock. He even said that you could hear the  
4 emotion in his voice at one point in time.

5 The State of Arizona spent over an hour  
6 attempting to draw the sting from these interviews  
7 during direct examination. And pursuant to 106,  
8 out of fairness, the entire interview should be  
9 played so that the jury understands what the actual  
10 interview is.

11 I don't understand an objection to  
12 keeping the truth from the jury. I will admit,  
13 Judge, that out of a 22-minute interview, there may  
14 be a couple minutes or something that perhaps isn't  
15 directly material to this case. But even during  
16 those short segments, his tone and demeanor can be  
17 assessed by the jury as to whether or not he was,  
18 and I quote, in an altered state, extreme distress,  
19 shock, during this interview.

20 THE COURT: There really should be a limiting  
21 instruction. But in light of the difference of --  
22 the differences in his testimony, what he said  
23 earlier and his explanations, there is relevance to  
24 the interview as a demonstrative type of  
25 presentation.

1 But there really should be a limiting  
2 instruction on this, Ms. Polk. It's just really,  
3 really unusual to have that. But, again, he's  
4 talking about altered states. He's talking about  
5 being very emotional, being in shock. And then  
6 everybody hears the interchange rather than just  
7 this broken up account.

8 You know, that's just the nature of  
9 things. I'm not criticizing either party. This is  
10 relevant to that purpose. But that's what it's  
11 relevant to. It seems to me there should be a  
12 limiting instruction on this, Ms. Polk.

13 MS. POLK: Your Honor, the state would agree  
14 with the limiting instruction.

15 THE COURT: So we'll be taking a break. And  
16 I'd like to have one so I can read it to them with  
17 regard to -- you know -- these tapes, Mr. Kelly.  
18 And I'm asking the parties to prepare one.

19 MR. KELLY: We will.

20 THE COURT: It will be read to them after the  
21 next break.

22 MR. KELLY: My understanding is the limiting  
23 instruction is something along the lines there may  
24 be words that you heard on these audiotapes that  
25 are not relevant to any material issue in this

1 case. And the tape was played solely to hear the  
2 tone of voice and demeanor and assess the quality  
3 of the answer.

4 Keep in mind, Judge, that this is  
5 critical.

6 THE COURT: I know, Mr. Kelly. I'm allowing  
7 it.

8 MR. KELLY: Just for the record. Because the  
9 materiality is in these two interviews he says, I  
10 didn't hear any statement in the sweat lodge. And  
11 then his testimony in this court is that he heard  
12 the death rattle or gurgling from Kirby Brown and  
13 some specific statements of my client. So they're  
14 extremely important.

15 And a limiting instruction as to the  
16 nonrelevant portions and the purpose of it, you bet  
17 we'll draft one.

18 THE COURT: Ms. Polk.

19 MS. POLK: Your Honor, I object to a limiting  
20 instruction that directs the jury to listen to the  
21 demeanor, essentially, along the lines that  
22 Mr. Kelly just proposed. I'd like to hear from the  
23 Court what you were thinking of when you suggested  
24 a limiting instruction.

25 THE COURT: That struck me, Mr. Kelly, too in

1 terms of -- it's just -- you know -- normally these  
2 things are hearsay. Much of it would be hearsay.  
3 At the same time a lot of it goes to impeachment  
4 too. The manner of presentation is not the normal  
5 way for impeachment to be presented. If --

6 MR. KELLY: Judge, I didn't mean to start the  
7 discussion in front of the jury about the limiting  
8 instruction. But if you're going to admit it's an  
9 instruction, I understand there needs to be a  
10 limiting instruction.

11 THE COURT: That would be up to Ms. Polk. And  
12 I don't want something that's --

13 You know, it is a problem, Ms. Polk. What  
14 Mr. Kelly just suggested there I didn't think would  
15 be appropriate. So it's something to think about.  
16 I've stated the basis of admissibility in this  
17 particular case.

18 MR. KELLY: Thank you.

19 MS. POLK: Your Honor, I would request that  
20 rather than taking a break and address the issue of  
21 a limiting instruction, if the Court is going to  
22 allow the tape to be played that we proceed and  
23 address the limiting instruction later.

24 THE COURT: That's what I mean to do.

25 (End of sidebar conference.)

1 THE COURT: Mr. Kelly, that may be played.  
2 MR. KELLY: Judge, for the record, the audio  
3 that has been marked for purposes of identification  
4 as 690.

5 (Exhibit 690 played.)

6 Q. BY MR. KELLY: Mr. Rock, so, again, it's  
7 your testimony today in front of this jury that  
8 when you provided the statement we just listened  
9 to, you were in a altered state, extreme distress,  
10 and shock and distraught; correct?

11 A. **That's how I felt inside.**

12 Q. And that you could hear people crying in  
13 the background, that other participants were upset,  
14 as people were providing these statements to  
15 Detective Parkinson; correct?

16 A. **Yes, I did.**

17 Q. And you heard the cheering on the tape?

18 A. **I heard what?**

19 Q. The cheering in the background. And you  
20 responded to Detective Parkinson, no. That's  
21 Robert and Theresa?

22 Did you hear that a moment ago?

23 A. **That's Robert and Theresa? Is that what**  
24 **I said?**

25 Q. Did you listen to the tape with us?

1 A. **Yes, I did.**

2 Q. Did you hear cheering in the background?

3 A. **No. I didn't hear -- I didn't understand**  
4 **that to be cheering. No.**

5 Q. And during that cheering, do you remember  
6 making the statement to Detective Parkinson, no?  
7 That's Robert and Theresa?

8 A. **I remember saying Robert and Theresa.**  
9 **Yes. I heard that. Yes.**

10 Q. You made a statement to the detective, I  
11 had no idea that people around me were that badly  
12 off.

13 Do you recall that?

14 A. **Yes.**

15 Q. And her response: Everybody was pretty  
16 surprised by that.

17 Do you recall the detective making that  
18 statement?

19 A. **I listened to the tape.**

20 Q. Go ahead and take a look at page 14,  
21 line 1.

22 A. **Okay. Yes.**

23 Q. And if you turn back to page 13, line 27  
24 and 28, you make the statement: I had no idea that  
25 people around me were that badly off.

1 And the response from the detective was:  
2 Everybody was pretty surprised by that. Correct?  
3 A. **Yeah. That's what it says. Yes.**  
4 Q. And then she follows that up by asking  
5 you a question as to whether anybody had asked you  
6 to say anything in particular when you were  
7 interviewed.

8 And your response was, no, they had not.  
9 Correct?

10 You want me to reask that question?

11 A. **Yes. At the time that was my response.**

12 Q. And you said, no. I wouldn't have  
13 listened to them anyway. Correct?

14 A. **Correct.**

15 Q. And at the time you keep qualifying your  
16 answer with at the time that was your response.  
17 And your response is different today; correct?

18 A. **Yes. After I -- it came to me that --**  
19 **yes. That they meant the Dream Team.**

20 Q. The detective had asked you at what point  
21 did you notice anyone having problems?

22 And your response was, I didn't really  
23 notice. I was focused on what I was doing.

24 Do you recall that statement --

25 A. **Yes.**

1 Q. -- in Exhibit 697?

2 A. **Yes.**

3 Q. And, again, your response today is --  
4 your testimony today is that that's not a true  
5 statement; correct?

6 A. **My testimony is that I recalled later**  
7 **that that isn't exactly how it happened.**

8 Q. Okay. That was a very direct question by  
9 the detective. Would you agree?

10 A. **I -- it was a question.**

11 Q. The question was, at what point did you  
12 notice anyone having problems?

13 Your response: I didn't really notice.

14 Correct?

15 A. **Correct.**

16 Q. My question is today your testimony is  
17 different; correct?

18 A. **Yes. That's what I remember differently.**

19 Q. Today -- when I say, "today," I mean both  
20 today and last Friday -- you testified in front of  
21 this jury is that you heard Kirby making gurgling  
22 sounds; correct?

23 A. **That's correct.**

24 Q. You indicated during your testimony last  
25 Friday as well as today that you heard statements

1 made by Mr. Ray in response to a question asking  
2 someone for help; correct?

3 **A. Yes. I heard him say --**

4 **Q.** And that testimony is starkly different  
5 than what you told the detective on  
6 October 8, 2009; correct?

7 **A. It's different because it took me this**  
8 **long to realize it. It took me a long time to get**  
9 **over that. And I'm still not over it.**

10 **Q.** Now, you have in front of you  
11 Exhibit 1068. On November 16, 2010, in that chair,  
12 in this courtroom, under oath in front of  
13 Judge Darrow, I asked you a question as to whether  
14 we could rely on the statements you had made on  
15 October 8.

16 Do you recall that?

17 **A. No. I don't recall that exact words.**

18 **Q.** So take a look at page 13, line 8.

19 **A. Okay.**

20 **Q.** Let me ask you a question. Do you have  
21 problems with your memory?

22 **A. I've had the problems that I've stated**  
23 **with my memory as regards to what I've now believe**  
24 **is postpartum --**

25 **Q.** Post-traumatic stress syndrome?

1 **A. Thank you.**

2 **Q.** The reason I ask that question is because  
3 this is the identical question that Ms. Polk asked  
4 you this morning before lunch, identical page and  
5 line that was read to this jury.

6 MS. POLK: Objection, Judge.

7 THE COURT: Overruled.

8 **Q.** BY MR. KELLY: My question is do you have  
9 problems with your memory?

10 **A. Other than what I just said, no.**

11 **Q.** Okay. Well, let's go through it again.  
12 The question from me, Mr. Rock, were you in an  
13 altered state when those statement were made?

14 Do you see that question?

15 **A. Yes.**

16 **Q.** And those statements were the statements  
17 made on October 8, 2009; correct?

18 **A. My answer was, I was in a slightly**  
19 **altered state. Correct.**

20 **Q.** Turn to page 11, line 18. Do you recall  
21 me asking the following question? Do you recall  
22 making a statement to Detective Wendy Parkinson  
23 back on October 8, 2009, as to what occurred  
24 in 2008?

25 Do you recall me making that statement?

1 **A. Last November?**

2 **Q.** Yes, sir.

3 **A. No. I don't recall you making that**  
4 **statement.**

5 **Q.** You have in front of you Exhibit 1069.  
6 Do you have any reason to believe that that  
7 question was not asked?

8 **A. Could you repeat the question, please.**

9 **Q.** Do you have any reason to believe that I  
10 did not ask you that question back in November  
11 of 2010?

12 **A. No.**

13 **Q.** I was going to ask you. If there is any  
14 memory problems during the last six or eight  
15 months, let us know. Okay? Will you do that?

16 **A. Yes.**

17 **Q.** Now, in response to that, you said, I  
18 barely remember speaking with her because I was  
19 still in an altered state. Correct?

20 **A. Correct.**

21 **Q.** Now, if you turn to page 13, Ms. Polk and  
22 I ask you the following question --

23 MS. POLK: Your Honor, objection. This is  
24 not -- the transcript does not reflect anything  
25 that I've said. I would ask that Mr. Kelly

1 clarify. He just said that Ms. Polk asked you on  
2 page 13 a question.

3 THE COURT: Mr. Kelly, if that's the case,  
4 sustained.

5 MR. KELLY: I'll rephrase.

6 **Q.** Do you remember being asked questions by  
7 Ms. Polk this morning?

8 **A. Yes.**

9 **Q.** Do you remember going through -- take a  
10 look at page 13, lines 8 through 14.

11 **A. Okay.**

12 **Q.** Do you remember her asking you the exact  
13 question that I'm asking you now?

14 **A. You mumbled. I couldn't hear the last**  
15 **part.**

16 **Q.** Let's try it again. Are you on page 13?

17 **A. Yes.**

18 **Q.** Have you read lines 8 through 14?

19 **A. Yes.**

20 **Q.** Do you remember being in this courtroom  
21 this morning?

22 **A. Yes.**

23 **Q.** Do you remember Ms. Polk asking you  
24 questions?

25 **A. Yes.**

1 Q. Do you remember her asking you to read to  
2 this jury the exact question between line 8 and  
3 line 14?

4 A. Yes.

5 Q. And that question was, Mr. Rock, were you  
6 in an altered state when those statement were made?  
7 What was your response?

8 A. Yes.

9 Q. You're going to have to read it exactly.  
10 Line 10.

11 A. Yeah. I was slightly altered --

12 Q. The next question. Does that mean that  
13 we cannot rely on the content or the substance?  
14 What was your response?

15 A. No, it doesn't.

16 Q. Keep going.

17 A. Because it's as accurate as I can  
18 remember.

19 Q. Under oath in front of Judge Darrow, you  
20 told the Judge that the October 8, 2009, statement  
21 we just heard was as accurate as I can remember;  
22 correct?

23 A. Correct.

24 Q. And that you were slightly altered while  
25 making that statement; correct?

1 A. Correct.

2 Q. Do you understand the factual problem as  
3 it relates to your testimony? No?

4 A. No.

5 Q. Let's try it again. Detective Parkinson  
6 asked you on October 8, 2009, did you notice anyone  
7 have any problems?

8 You responded, I didn't really notice.  
9 Correct?

10 A. Correct.

11 Q. You told the Judge Darrow under oath on  
12 November 16, 2010, that we can rely on that  
13 statement because it's as accurate as I can  
14 remember; correct?

15 A. Correct.

16 Q. You told this jury Friday that you did  
17 notice people having problems in the sweat lodge;  
18 correct?

19 A. Yes.

20 Q. Kirby gurgling; correct?

21 A. That's what I heard her do.

22 Q. Someone asking for help?

23 A. That's what I heard her do.

24 Q. And a response from my client; correct?

25 A. I heard his response.

1 Q. Exhibit 1068 is the use immunity  
2 agreement; correct?

3 A. Correct.

4 Q. And there is an exception to the use  
5 immunity as it relates to perjury; correct?

6 A. That's what it says. Yes.

7 Q. Mr. Launder explained to you that  
8 perjury is providing a sworn statement under oath  
9 in front of a judge that's not true; correct?

10 A. Yes, he did.

11 Q. November 16, 2010, you were under oath;  
12 correct?

13 A. Yes.

14 Q. You said we could rely on the content of  
15 the statement made on October 8; correct?

16 A. Correct.

17 Q. On Friday and today in 2011, you're under  
18 oath; correct?

19 A. Correct.

20 Q. And now your testimony is different;  
21 correct?

22 A. I don't connect to that. No.

23 Q. Let me ask it this way: Are today --  
24 June 1st, 2011, is it your testimony that when you  
25 were in the sweat lodge on October 8, 2009, you did

1 not notice anyone having any problems?

2 A. Today?

3 Q. Today.

4 A. No, it's not.

5 Q. Then would you agree with me that you  
6 were not telling the truth to the Judge in your  
7 sworn statement on November 16?

8 A. No. I wouldn't.

9 Q. Today, June 1st, 2011, is it your  
10 testimony that the heat levels between the sweat  
11 lodges that you experienced in 2008 and 2009 were  
12 the same?

13 A. No.

14 Q. Would you agree with me that your  
15 October 8, 2009, statement says that it's the same,  
16 it's the same, pretty much the same, heat level the  
17 same? It was enclosed the same way?

18 A. Yes. I read that.

19 Q. On November 16, 2010, your sworn  
20 testimony in front of Judge Darrow was that we  
21 could rely on the content and substance of the  
22 statement you made on October 8, 2009; correct?

23 A. I really don't remember saying that it  
24 was the content. Because that was after you  
25 attacked me and started yelling at me that day.

1 **And I couldn't --**

2 MR. KELLY: Your Honor, I'd ask that you  
3 admonish the witness.

4 THE COURT: Mr. Rock, there is no question.

5 Please wait until the attorney asks a question?

6 Q. BY MR. KELLY: I've yelled at my sons a  
7 couple times but nobody else, Mr. Rock.

8 Let's take a look at Exhibit 1069. It's  
9 in front of you. Please.

10 A. Pardon?

11 Q. 1069.

12 A. Okay.

13 Q. Take a look at the first page.

14 MS. POLK: Counsel, are you talking about the  
15 testimony from November 16?

16 Q. BY MR. KELLY: I'm sorry. 1068, sir. I  
17 had the wrong number.

18 A. Okay.

19 Q. Take a look at the face page of that  
20 exhibit.

21 A. Okay.

22 Q. Does it not say, State of Arizona versus  
23 James Arthur Ray?

24 A. Yes.

25 Q. Does it not say, reporter's transcript of

1 proceedings before the Honorable Warren R. Darrow?

2 A. Yes, it does.

3 Q. November 16, 2010?

4 A. Yes, it does.

5 Q. Now, if you would please turn to page 13,  
6 line 11. The question, does that mean that we  
7 cannot rely on the content or the substance of your  
8 October 8, 2009, statement.

9 And your response was --

10 MS. POLK: Objection. Mr. Kelly did not read  
11 accurately from the transcript. I would ask that  
12 he read what's written in the transcript.

13 THE COURT: I know the discrepancy.

14 Mr. Kelly, I know the question reads  
15 differently. There can be follow up --

16 MR. KELLY: Judge, I prepared the exact words  
17 of the prosecutor during her statement. She did  
18 the identical thing to help the jury understand.  
19 But I will rephrase it.

20 Q. Question at line 11, sir. Does that mean  
21 that we cannot rely on the content and the  
22 substance?

23 And your answer, please? Line 13.

24 A. No, it doesn't. Because it's as accurate  
25 as I can remember.

1 Q. So the question was whether or not this  
2 judge could rely on the content or the substance of  
3 your October 8, 2009, statement; correct?

4 A. Yes.

5 Q. And, again, I just asked you a question  
6 about whether you on October 8 told  
7 Detective Parkinson the heat level was the same.  
8 You did that; correct?

9 A. In one part of it, yes. In one part of  
10 it, no.

11 Q. Mr. Rock, take a look at page 4. Excuse  
12 me. Page 3, line 28. Detective Parkinson: Was  
13 there anything different about the sweat lodge from  
14 last year as opposed to this year?

15 What was your response?

16 A. No.

17 Q. Detective Parkinson: It's the same?  
18 What was your response?

19 A. It's the same, pretty much the same, heat  
20 level the same. It was enclosed the same way.

21 Q. On November 16, 2010, you told  
22 Judge Darrow that we could rely on the content or  
23 the substance of this statement; correct?

24 A. Yes. I read it in there. Yes.

25 Q. And you were under oath; correct?

1 A. Correct.

2 Q. On October 8, 2009, you told  
3 Detective Mark Parkinson, and I'm referring to  
4 page 10, line 13, so in other words, when I left  
5 the sweat lodge, I thought they were fine.  
6 Correct?

7 A. Yes. I had a memory problem right then.

8 Q. Well, explain that to us. Let me write  
9 this down. A memory problem. Go ahead and explain  
10 to the jury the extent of your memory problem.

11 A. Because I had repressed what happened.  
12 That's the best I can explain. I repressed so much  
13 that happened.

14 Q. And you repressed it from October 8, the  
15 date of the sweat lodge; correct?

16 A. Yes.

17 Q. Through November 17, 2010, the day after  
18 your sworn testimony; correct?

19 A. No. Because I gave -- in September I  
20 gave --

21 Q. Mr. Rock, have I mischaracterized  
22 anything to this jury about your November 16, 2010,  
23 testimony?

24 MS. POLK: Your Honor, I would ask that the  
25 witness be allowed to finish his previous answer

1 without being interrupted.

2 MR. KELLY: I thought he was finished, Judge.

3 THE COURT: Overruled.

4 You may answer the question that's before  
5 you if you can, Mr. Rock.

6 THE WITNESS: Which question?

7 Q. BY MR. KELLY: You were under oath on  
8 November 16, 2010; correct?

9 A. Correct.

10 Q. You were in front of Judge Darrow;  
11 correct?

12 A. Correct.

13 Q. You were answering questions posed by me;  
14 correct?

15 A. Correct.

16 Q. You said under oath that we could rely on  
17 the October 8, 2009, statement as to it's content  
18 or substance. We just went through that; correct?

19 A. Yes.

20 Q. Now you tell us that you have a memory  
21 problem because your feelings were repressed. So I  
22 take it that these feelings came to light sometime  
23 after November 16, 2010. Correct?

24 A. I explained that by you attacking me, I  
25 wasn't sure what I answered to.

1 Q. Now it's my fault?

2 A. Well, that's what happened.

3 Q. And did I misread any question posed in  
4 Exhibit 1068?

5 A. No. Not that I know of.

6 Q. Do you believe that Judge Darrow is not  
7 capable of protecting witnesses on the witness  
8 stand?

9 A. He's very capable.

10 Q. So you were not physically harmed during  
11 my cross-examination, were you?

12 A. No. Just mentally.

13 Q. You said, attacked. So we're going to  
14 narrow this down. So mentally you were harmed  
15 because while you're under oath I'm attempting to  
16 elicit the truth?

17 A. You were yelling and screaming at me.

18 Q. And you understand you're under oath now?

19 A. That's what I thought.

20 Q. You have use immunity as to anything that  
21 you say during your testimony except perjury;  
22 correct?

23 MS. POLK: Your Honor, objection.

24 THE COURT: Sustained.

25 Q. BY MR. KELLY: You have use immunity as

1 exemplified by Exhibit 1069 in evidence; correct?

2 A. Yes.

3 Q. That does not cover perjury; correct?

4 A. Yes.

5 Q. Judge Darrow was present, in person,  
6 alive, during the November 16, 2010, hearing;  
7 correct?

8 A. Yes.

9 Q. Mr. Hughes and Ms. Polk were here?

10 A. Yes.

11 Q. You're understanding of lying under oath  
12 can result in a perjury charge?

13 A. Yes.

14 Q. But you don't have a belief or a fear  
15 that the county attorney would ever charge you with  
16 a crime, do you, Mr. Rock?

17 A. I have no idea. I already stated that I  
18 hope she wouldn't.

19 Q. So you were telling us about your memory  
20 problem. And that is in addition to your altered  
21 state, extreme distress, shock, PTSD, and now  
22 memory problem; correct?

23 A. That's what I said.

24 Q. And that's a result of being a  
25 participant in the October 8, 2009, sweat lodge

1 ceremony; correct?

2 A. Yes.

3 Q. It's not like -- yesterday was Memorial  
4 Day. Are you aware of that? Excuse me. The day  
5 prior. Correct?

6 A. I'm aware of it. You just weren't.

7 Q. Okay. I made a mistake.

8 A. Okay. Yes. And I make mistakes too.

9 Q. And you realize Memorial Day is a day set  
10 aside for veterans that served this country;  
11 correct?

12 A. Correct.

13 Q. Many of whom suffer from PTSD; correct?

14 A. I think they do.

15 Q. As a result of being in combat; correct?

16 A. Yes.

17 Q. You want this jury to believe that you  
18 suffered from PTSD diagnosed eight weeks ago  
19 because you were in a sweat lodge; correct?

20 A. That's what I was told.

21 Q. And you were only diagnosed two months  
22 ago during the pendency of this trial; correct?

23 A. Yes. Two months ago.

24 Q. So was that before or after the  
25 February 22nd statement that you gave to the media?

1 **A. It was -- it was about eight weeks ago.**

2 THE COURT: Excuse me, Mr. Kelly, Mr. Rock.

3 We're at the break time. We're going to  
4 take the afternoon recess at this time, ladies and  
5 gentlemen. Remember the admonition. Please be  
6 reassembled at 25 after, about 20 minutes.

7 Mr. Rock, remember the rule of exclusion.

8 Thank you.

9 (Recess.)

10 THE COURT: The record will show the presence  
11 of Mr. Ray, the attorneys, the jury. Mr. Rock is  
12 on the witness stand.

13 Mr. Kelly.

14 MR. KELLY: Thank you, Judge.

15 **Q.** Mr. Rock, right before the break we were  
16 talking about your memory as it relates to the  
17 events of October 8, 2009. I believe you told us  
18 that on August 7, 2010, you moved to Angel Valley.

19 **A. No.**

20 **Q.** What day did you move to Angel Valley?

21 **A. I believe it was August 21st.**

22 **Q.** August 21st, 2010, you gave up your home  
23 in Illinois and moved out here to Angel Valley;  
24 correct?

25 **A. Yes.**

1 **Q.** And the reason to do that was to  
2 volunteer, help out at Angel Valley? Fair  
3 statement?

4 **A. Yes.**

5 **Q.** Were you employed? Did you receive money  
6 as a result of your activity?

7 **A. No.**

8 **Q.** Strictly a volunteer status?

9 **A. Yes.**

10 **Q.** And did you live on the facility of  
11 Angel Valley itself?

12 **A. Yes.**

13 **Q.** How long did you live at Angel Valley?

14 **A. Until -- I think it was the 3rd of**  
15 **January of 2011.**

16 **Q.** So approximately five, six months you  
17 lived at Angel Valley? Somewhere in that time  
18 frame; correct?

19 **A. Four months.**

20 **Q.** September through January; correct?

21 **A. Not through January. I said January 2nd**  
22 **or 3rd.**

23 **Q.** I misunderstood. September, October,  
24 November and December. Approximately four months  
25 you lived at Angel Valley?

1 **A. Correct.**

2 **Q.** And did you have a house there?

3 **A. No.**

4 **Q.** What facility did you stay in?

5 **A. At first a tent and then a cabin.**

6 **Q.** And you're married. Your wife Vicky and  
7 you resided there together; correct?

8 **A. Correct.**

9 **Q.** During that time you told us on direct  
10 that you had the opportunity to speak with Michael  
11 Hamilton?

12 **A. Correct.**

13 **Q.** Amayra Hamilton; correct?

14 **A. Correct.**

15 **Q.** Fawn Foster; correct?

16 **A. Correct.**

17 **Q.** Now, did you also have a chance to speak  
18 with Ted Mercer?

19 **A. No.**

20 **Q.** Do you know who Ted Mercer is?

21 **A. Yes. He's -- yes. He used to live**  
22 **there.**

23 **Q.** And he was the fire tender in  
24 October 2009; correct?

25 **A. Correct.**

1 **Q.** But my questions is during that  
2 four-month time period, did you ever have a chance  
3 to speak with Ted Mercer?

4 **A. No.**

5 **Q.** How about Debbie Mercer?

6 **A. Just -- well, just here when they came in**  
7 **in November. I just said hello to them.**

8 **Q.** And final question is Sarah Mercer. Did  
9 you speak with her during that four-month time  
10 period?

11 **A. No.**

12 **Q.** Explain to us what it is that brought you  
13 back to Angel Valley.

14 **A. What brought me back to Angel Valley was**  
15 **I'm trying to heal because this has really**  
16 **devastated my life.**

17 **Q.** And between October 8, 2009, until  
18 August 21, 2010, you were in Illinois?

19 **A. Correct.**

20 **Q.** Were you speaking with other participants  
21 during that time period?

22 **A. Other participants?**

23 **Q.** Yes, sir.

24 **A. Melissa, who was a participant; and Lara**  
25 **Prieve, whatever her name was. I'm not sure.**

1 Q. Anyone else?

2 A. **Not that I can remember right now.**

3 Q. Was Fawn Foster employed or present at

4 Angel Valley during the four months that you lived

5 there?

6 A. **Yes.**

7 Q. And that was a poor question. Did she

8 live there?

9 A. **I'm sorry. No. She didn't live there.**

10 **She lives in Cottonwood.**

11 Q. Do you know if she was working there

12 during that time period?

13 A. **Yes. I believe she was working there.**

14 Q. So was she there pretty much every day?

15 A. **Pretty much. Yes.**

16 Q. Fair to say you saw Fawn Foster fairly

17 frequently?

18 A. **Correct.**

19 Q. Now, on direct, and I believe it was

20 Friday, you told us that you actually spoke with

21 Fawn, Amayra and Michael about what happened on

22 October 8, 2009; correct?

23 A. **Correct.**

24 Q. You -- well, explain that to us. How did

25 that come about?

1 A. **We would just gather and talk about our**

2 **experiences in life. So that's when it happened.**

3 Q. And was there a healing process that you

4 were attempting to undertake during these

5 conversations?

6 A. **Yes. By speaking what happened to you**

7 **and what happens in your life, yeah. You heal from**

8 **it.**

9 Q. And when you talk about what happened to

10 you and what happens in your life, you were

11 referring specifically to October 8, 2009; correct?

12 A. **That was a part of it. Correct.**

13 Q. I'm sure you talked about many other

14 things. But I want to focus in on October 8, 2009.

15 Did Michael Hamilton share with you his experience

16 from October 8, 2009?

17 A. **Not a whole lot. No.**

18 Q. Some?

19 A. **Some.**

20 Q. Did Amayra Hamilton share with you her

21 experience from October 8, 2009?

22 A. **Some. Yes.**

23 Q. And, finally, did Fawn Foster share with

24 you her experience from October 8, 2009?

25 A. **Very little.**

1 Q. And during those conversations, then,

2 would you turn around and share your experience

3 from October 8 with those three individuals?

4 A. **Yes.**

5 Q. You knew during the fall of 2010 that

6 Angel Valley was a defendant in a lawsuit; correct?

7 A. **Yes.**

8 Q. You knew that Amayra Hamilton was a

9 defendant in a lawsuit; correct?

10 A. **Correct.**

11 Q. And that Michael Hamilton was a defendant

12 in a lawsuit; correct?

13 A. **Correct.**

14 Q. You knew that during their interviews,

15 the interviews of Michael and Amayra Hamilton, they

16 requested the presence of their attorney?

17 A. **Yes. I think so. I'm not 100 percent.**

18 Q. I don't want you to guess if you don't

19 know. You knew they were being sued; correct?

20 A. **I knew they were being sued. I couldn't**

21 **say anything else about that, though.**

22 Q. And you knew that it was Angel Valley

23 that was responsible for the construction of the

24 sweat lodge in 2008 and 2009; correct?

25 A. **I knew that Angel Valley produced the**

1 **sweat lodge. Yes. They made it.**

2 Q. You knew that Amayra Hamilton and Michael

3 Hamilton owned Angel Valley; correct?

4 A. **Yes.**

5 Q. And you knew that Angel Valley, Michael

6 Hamilton, Amayra Hamilton, were not indicted by the

7 Yavapai County Attorney for any reason; correct?

8 A. **They weren't what?**

9 Q. Indicted. Charged with a crime.

10 A. **Correct.**

11 Q. After you had moved there on August 21,

12 approximately a month later, I believe it was

13 Amayra Hamilton that kind of offered you up as a

14 witness to Detective Diskin. Correct?

15 A. **She asked me if I wanted to talk to the**

16 **detective, and I said I would.**

17 Q. And maybe that was poorly phrased. But

18 it was Amayra's suggestion that you go to speak

19 with the detective; correct?

20 A. **Yes. She asked me if I wanted to speak**

21 **with the detective.**

22 Q. It was not Detective Diskin calling you

23 directly and asking you; correct?

24 A. **That's correct. At that time.**

25 Q. And it was not you contacting

1 Detective Diskin and asking to speak with him;  
 2 correct?  
 3 **A. Correct.**  
 4 **Q.** It was Amayra Hamilton that was the go  
 5 between or set up the interview; correct?  
 6 **A. Correct.**  
 7 **Q.** And did that interview take place at  
 8 Angel Valley?  
 9 **A. Correct.**  
 10 **Q.** Now, you told us on direct that -- let's  
 11 see if I can get the right term -- you had a  
 12 repressed memory and that speaking with Michael and  
 13 Amayra Hamilton helped you remember. Correct?  
 14 **A. Yes. My time at Angel Valley helped me**  
 15 **to start remembering and accepting the things that**  
 16 **I remembered.**  
 17 **Q.** Now, you had been at Angel Valley for two  
 18 and a half months before you testified on  
 19 November 16, 2010, in front of Judge Darrow;  
 20 correct?  
 21 **A. Correct.**  
 22 **Q.** And from your testimony before the break,  
 23 I take it that today, June 1st, 2011, we cannot  
 24 rely on your interview of October 8, 2009.  
 25 Correct?

1 **A. I was remembering the best I could at**  
 2 **that time.**  
 3 **Q.** When you said on October 8, 2009, to  
 4 Detective Parkinson, so in other words, when I left  
 5 the sweat lodge, I thought they were fine, you're  
 6 telling this jury today do not rely on that  
 7 statement as truthful; correct?  
 8 **A. It's not as I remember it today.**  
 9 **Q.** Now, your memory today, then, is  
 10 facilitated by the conversations that you had at  
 11 Angel Valley; correct? I mean, you just told us  
 12 that.  
 13 **A. Pardon? I didn't hear that.**  
 14 **Q.** You just told us that. It helped your  
 15 memory --  
 16 **A. Part of my healing is how that -- yes.**  
 17 **Part of my healing. Yes.**  
 18 **Q.** So this healing process -- is it  
 19 complete?  
 20 **A. No.**  
 21 **Q.** So is your memory, then, going to be  
 22 better, say, July 1st, 2011?  
 23 **A. I would say that I hope to feel better by**  
 24 **July 1st, 2011. Yes.**  
 25 **Q.** Will your memory be better December 1st,

1 2011?  
 2 **A. I can't answer that. How do you know?**  
 3 **Q.** Well, would you agree with me that the  
 4 jury is entitled to know that your --  
 5 **A. Of course they are.**  
 6 **Q.** And when they're making a determination  
 7 as to what constitutes the truth, do you believe  
 8 that inconsistent statements may affect your  
 9 credibility?  
 10 **A. Absolutely. It could happen.**  
 11 **Q.** Do you believe that being provided use  
 12 immunity from the State of Arizona may affect your  
 13 credibility?  
 14 **A. It may. I can't determine what others**  
 15 **are going to think.**  
 16 **Q.** Do you believe that your repressed memory  
 17 may affect your credibility?  
 18 **A. It may. Once again, I can't determine**  
 19 **what others will believe.**  
 20 **Q.** Do you believe your post-traumatic stress  
 21 syndrome may affect your credibility?  
 22 **A. The same answer.**  
 23 **Q.** Okay. My point, Mr. Rock, is that I  
 24 believe what you're telling this jury is that as  
 25 your healing process goes on, the accuracy of your

1 recollection gets better. Correct?  
 2 **A. It's helped me in many areas to gain**  
 3 **clarity on what happened.**  
 4 **Q.** Well, if you're telling them what you  
 5 said on October 8, 2009, is not correct, that it's  
 6 more correct today, then has not the passage of  
 7 time helped your memory?  
 8 **A. Yes, it has.**  
 9 **Q.** And your healing process is not complete;  
 10 correct?  
 11 **A. I would say no. It's not 100 percent.**  
 12 **Q.** So your memory is going to get better,  
 13 and you would have a more accurate testimony next  
 14 month, six months, or a year, whenever you're  
 15 healing process --  
 16 **A. When I speak to my healing getting**  
 17 **better, I speak to being able to live with what**  
 18 **I've already remembered.**  
 19 **Q.** Well, you're having a difficult time  
 20 because you were in the sweat lodge, and two very  
 21 good people passed away -- actually three,  
 22 essentially, in front of you; correct?  
 23 **A. Two passed away in front of me and one**  
 24 **passed away in the hospital.**  
 25 **Q.** And you didn't do anything about it;

1 correct?

2 **A. Correct.**

3 **Q.** You told us how despite what Mr. Ray  
4 would say, you lifted the tarp to get more air;  
5 correct?

6 **A. I did.**

7 **Q.** Detective Parkinson said, wouldn't you  
8 get in trouble if you did that?

9 You said, I don't care. Correct?

10 **A. That's what I said. Correct.**

11 **Q.** And Kirby Brown and James Shore were in  
12 your sight on October 8, 2009; correct?

13 **A. They were within my sight. I could have  
14 seen them if I was able to look up and see them.**

15 **Q.** And now it's your testimony today that  
16 when you heard a gurgling sound from Kirby, you  
17 didn't do anything?

18 **A. That's correct. Because I couldn't  
19 physically move.**

20 **Q.** You had the wherewithal to open the  
21 bottom of the tarp to get more air; correct?

22 **A. That was -- yes. I was doing that.**

23 **Q.** You didn't look over at Sean Ronan and  
24 say, Sean, give me a hand. We're getting Kirby out  
25 of here. Correct?

1 **A. You have no idea what it's like to be in  
2 a sweat lodge, do you, Mr. Kelly?**

3 **Q.** Mr. Rock, are you having a problem  
4 answering my question?

5 **A. I could only --**

6 **Q.** It's a yes or no question.

7 **A. No.**

8 **Q.** Is your memory -- something wrong with  
9 your memory?

10 **A. Not right at this moment. No.**

11 **Q.** Emotionally you okay?

12 **A. Not very well.**

13 **Q.** Is one of the reasons not very well  
14 because you didn't stand up and help Kirby Brown?

15 **A. It was because I couldn't stand up and  
16 help Kirby Brown.**

17 **Q.** You could speak. You didn't speak;  
18 correct?

19 **A. No. I did not speak.**

20 **Q.** But you lifted the tarp; correct? This  
21 is what you want the jury to believe today;  
22 correct?

23 **A. I explained how I lifted the tarp.**

24 **Q.** That's a contrast from what you told the  
25 detectives on October 8 and October 29, that I

1 wasn't aware of anybody in trouble until I left the  
2 sweat lodge. Correct?

3 **A. Correct.**

4 **Q.** And you told KPHO on February 22nd, I  
5 would lift the side of the lodge, he said -- you,  
6 Mark Rock -- to let more oxygen into a tent where  
7 people could hardly breathe because there would  
8 have been more deaths than there were that day.

9 Do you recall making that statement to  
10 the media?

11 **A. I might have. I'm not 100 percent. I  
12 don't have a transcript.**

13 **Q.** So, again, is there some -- I asked you  
14 right before the break, were you diagnosed with  
15 PTSD before or after February 22nd, 2011?

16 **A. I was diagnosed after.**

17 **Q.** So when we're talking about this jury's  
18 ability to rely on the accuracy of your testimony,  
19 it's affected by post-traumatic stress syndrome;  
20 correct?

21 **A. It has been. Yes.**

22 **Q.** Because you can't even remember telling a  
23 reporter that if you wouldn't have lifted up the  
24 tarp, there would have been many more deaths that  
25 day?

1 **A. I was saying that there could have been.  
2 Yes.**

3 **Q.** When he emerged, Rock said he saw the  
4 chaos. People were laying on the ground all over  
5 the place.

6 MS. POLK: Excuse me, Your Honor. I would ask  
7 that counsel --

8 MR. KELLY: May I finish the question?

9 THE COURT: You may finish the question,  
10 Mr. Kelly.

11 **Q.** BY MR. KELLY: Do you recall making that  
12 statement to the media?

13 THE COURT: Ms. Polk.

14 MS. POLK: Your Honor, I would ask that  
15 counsel provide the statement, a copy of what he's  
16 reading.

17 THE COURT: He will do that.

18 **Q.** BY MR. KELLY: Do you recall making that  
19 statement?

20 **A. Yes.**

21 **Q.** You told this jury on Friday that you  
22 crawled out, that you went over to the location,  
23 and there was an exhibit, and it was some flagstone  
24 rocks, and that you rolled over on your stomach on  
25 top of those rocks and then you were able to get

1 up?

2 **A. Yes.**

3 **Q.** How was that experience, rolling over on  
4 those rocks?

5 **A. That's what I did.**

6 **Q.** I'm asking, here you are, and you roll  
7 over on this pile of rocks that you showed us on  
8 the exhibit. And my question is what do you  
9 remember about that, rolling up on top of those  
10 rocks?

11 **A. That I wanted to be able to get up and  
12 get moving.**

13 **Q.** I'm going to try to get the photograph up  
14 there. Mr. Rock, I'm going to publish Exhibit 145.

15 Perhaps we can go back out to a wider  
16 view.

17 You told us last Friday these are the  
18 rocks that you rolled over on?

19 **A. Correct.**

20 MR. KELLY: Now we can blow it up.

21 **Q.** These would appear to be flagstone rocks;  
22 correct?

23 **A. Yes.**

24 **Q.** Mr. Rock, do you realize that for two  
25 hours prior to your coming out of the sweat lodge

1 that the ashes had been dusted off at that location  
2 by Rotillo Vasquez?

3 **A. No, I don't. I don't know that.**

4 **Q.** Would you agree with me if someone were  
5 to brush off ashes from a hot fire on these rocks,  
6 that if you actually rolled over on those rocks,  
7 you'd probably get burned, wouldn't you?

8 **A. No. I don't agree with that because they  
9 weren't hot.**

10 **Q.** Okay. Now you have a memory; correct?

11 **A. That's what I remembered.**

12 **Q.** And that particular portion of your  
13 memory has not been affected by post-traumatic  
14 stress syndrome; correct?

15 **A. Correct.**

16 **Q.** It hasn't been affected by your prior  
17 inconsistent statements; correct?

18 **A. Correct.**

19 **Q.** And when you told the jury how you  
20 described the scene after you left the sweat lodge,  
21 it was quite different than what you told the media  
22 on February 22nd; correct?

23 **A. I didn't tell the media every aspect of  
24 what happened.**

25 **Q.** You said it was chaos.

1 **A. It was what?**

2 **Q.** Chaos.

3 **A. Yeah. When I rolled over, it was. I was  
4 referring to the choppers coming in and the  
5 ambulances coming down the hill.**

6 **Q.** Did you, when you were at Angel Valley,  
7 meet an individual by the name of Rotillo Vasquez?

8 **A. Yes. I met him.**

9 **Q.** And Rotillo was the groundskeeper for  
10 Angel Valley; correct?

11 **A. Yes.**

12 **Q.** Was he still employed there, if you  
13 recall, during the fall of 2010?

14 **A. He did do some work occasionally there  
15 towards the end, like, maybe December. I'm not  
16 sure exactly when. It wasn't right when I -- it  
17 wasn't right when I was there.**

18 **Q.** Would you agree with me that his primary  
19 job at Angel Valley was that as a, like, a  
20 groundskeeper?

21 **A. Yes.**

22 **Q.** To take care of the weeds, the  
23 cleanliness of the place, that type of thing;  
24 correct?

25 **A. Yes.**

1 **Q.** Mr. Rock, on Friday you were asked a  
2 series of questions about the participants signing  
3 the waiver and release.

4 Do you recall those questions?

5 **A. Yes.**

6 **Q.** You were during October of 2009 a Dream  
7 Team member; correct?

8 **A. Yes.**

9 **Q.** You told this jury that, in your opinion,  
10 it looked like they had hardly read them; correct?

11 **A. The ones that I dealt with. Correct.**

12 **Q.** And, of course, you don't know. You  
13 can't read another person's mind; correct?

14 **A. Correct.**

15 **Q.** Now, were you aware that each one of  
16 those participants received a copy of the release  
17 months before October of 2009?

18 **A. No.**

19 **Q.** Did you know that?

20 **A. No. I did not.**

21 **Q.** And let me hand you what's been admitted  
22 as 189.

23 May I approach?

24 THE COURT: Yes.

25 **Q.** BY MR. KELLY: Do you recognize that

1 document?

2 **A. No. I mean, I can read it, but I don't**  
3 **recognize reading it.**

4 **Q.** So, again, is this a memory problem?

5 **A. No. I just don't believe that I read**  
6 **this.**

7 **Q.** Do you have any reason to dispute that  
8 all Dream Team members were provided a copy of this  
9 particular document entitled "Dream Team  
10 Expectations"?

11 **A. No. I can't remember when or where it**  
12 **would have been given to me.**

13 **Q.** Take a look at Bates 2506.

14 If we can blow up the paragraph, by sweat  
15 lodge.

16 This exhibit, Mr. Rock -- does it not say  
17 that for the sweat lodge you will assist  
18 participants as they enter and exit the sweat  
19 lodge?

20 **A. That's what this says right here.**

21 **Q.** If you are inside the sweat lodge, you  
22 must remain alert and ready to help the entire  
23 time; correct?

24 **A. That's what it says. Correct.**

25 **Q.** And this document, Exhibit 189, is the

1 Dream Team Expectations, representing James Ray  
2 International; correct?

3 **A. That's what it says at the top of this**  
4 **document. Dream Team Expectations.**

5 **Q.** Your testimony today is that you didn't  
6 receive this document or you don't remember?

7 **A. I don't recall receiving this document.**

8 **Q.** You told the jury that you went to the  
9 north corner or the north direction as a Dream Team  
10 member; correct?

11 **A. I was told. Yes.**

12 **Q.** What was your purpose?

13 **A. My purpose was to hold space for the**  
14 **people.**

15 **Q.** Hold space. What does that mean?

16 **A. That means to be there in prayer and**  
17 **meditation and think of them having a positive**  
18 **experience.**

19 **Q.** Do you think it may mean to remain alert  
20 and ready to help the entire time?

21 **A. That's not what I just said. So no.**

22 **Q.** You do not think, as you sit here today,  
23 that was your role in the sweat lodge, to remain  
24 alert and ready to help the entire time?

25 **A. It was just to be myself and do the best**

1 **I could to do whatever I could for anybody. And**  
2 **that's what my intention when I went in there.**

3 **Q.** So maybe it's your testimony today you  
4 didn't understand your role as a Dream Team member.  
5 Fair statement?

6 **A. I understood it's what I just said it**  
7 **was.**

8 **Q.** Well, we do know that you did not remain  
9 alert, according to your testimony; correct?

10 **A. I remained as alert as I possibly could.**

11 **Q.** We do know that you didn't help anyone  
12 the entire time you were in the sweat lodge;  
13 correct?

14 **A. Not other than if they benefit from the**  
15 **oxygen I was getting in by lifting the side.**

16 **Q.** And on October 8, 2009, you told  
17 Detective Parkinson you were not even aware that  
18 anyone was in distress; correct?

19 **A. That was my statement. Correct.**

20 **Q.** On October 29, 2009, you told  
21 Lieutenant Boelts that you were not even aware that  
22 anyone was in distress; correct?

23 **A. That was my statement.**

24 **Q.** So if a Dream Team member is not aware  
25 that anyone is in distress, obviously they would

1 not be aware of the need for help; correct?

2 **A. Correct.**

3 **Q.** But now, Mr. Rock, your repressed memory  
4 has provided you the benefit of remembering what  
5 happened on October 8, 2009; correct?

6 **A. Correct.**

7 **Q.** Do you remember making a statement -- how  
8 many statements did you make to the media?

9 **A. To the media?**

10 **Q.** Yes, sir.

11 **A. I made one in October, I believe, and one**  
12 **in February. That's it.**

13 **Q.** October of which year?

14 **A. That would be 2010.**

15 **Q.** And that was during the --

16 **A. Around the anniversary of the sweat**  
17 **lodge?**

18 **Q.** The ceremony?

19 **A. Yeah.**

20 **Q.** Because you've been described as the  
21 architect of transformation -- or excuse me. The  
22 architect of the garden of transformation?

23 **A. Yes.**

24 **Q.** And the garden of transformation was the  
25 ceremony that was held on the site of this tragedy

1 one year later; correct?  
 2 **A. Correct.**  
 3 **Q.** And you were there; correct?  
 4 **A. Correct.**  
 5 **Q.** And you knew that Michael and Amayra  
 6 Hamilton had invited participants, actual  
 7 participants, to come on that day; correct?  
 8 **A. Correct.**  
 9 **Q.** And the condition of their invitation was  
 10 that they would drop their lawsuit; correct?  
 11 **MS. POLK:** Your Honor, assumes facts not in  
 12 evidence --  
 13 **THE WITNESS:** I'm not clear on that --  
 14 **MS. POLK:** -- misstates testimony.  
 15 **THE COURT:** Mr. Rock, there was an objection.  
 16 If you can answer the question, you may, if you  
 17 have knowledge and can do it. If you're not able  
 18 to do it, you can let the lawyer know that.  
 19 **THE WITNESS:** I'm not clear on that.  
 20 **Q.** BY MR. KELLY: Reason I ask you that  
 21 question was are you aware that we've heard  
 22 testimony from Amayra Hamilton?  
 23 **A. Yes.**  
 24 **Q.** Are you aware that we've heard testimony  
 25 from Michael Hamilton?

1 **A. Yes.**  
 2 **Q.** And Fawn Foster?  
 3 **A. Yes.**  
 4 **Q.** Are you aware that Fawn Foster told this  
 5 jury that she had never spoke to anyone about what  
 6 happened between October 8, 2009, and her  
 7 testimony?  
 8 **MS. POLK:** Your Honor, objection. Misstates  
 9 her testimony.  
 10 **THE COURT:** Once again, ladies and gentlemen,  
 11 as I've instructed before, what the lawyers say is  
 12 not evidence. Questions are not evidence. So you  
 13 have to rely on your recollection of the testimony  
 14 in assessing the question.  
 15 **Mr. Kelly, repeat the question.**  
 16 **And the objection is overruled.**  
 17 **Q.** BY MR. KELLY: If Fawn Foster said she  
 18 had never spoke to anyone about what happened  
 19 between October 8 and the date of her testimony,  
 20 that would be a lie; correct?  
 21 **A. I don't know.**  
 22 **Q.** Mr. Rock, you told us that you spoke  
 23 personally to Fawn Foster in the fall of 2010 about  
 24 specific events occurring on October 8, 2009?  
 25 **A. I didn't say specific events.**

1 **Q.** About -- and I believe my question was,  
 2 did you share your experience with her?  
 3 **And you said, yes.**  
 4 **Do you recall that testimony?**  
 5 **A. Experience. Yes.**  
 6 **Q.** And did she share her experience with  
 7 you?  
 8 **And you said, yes. Correct?**  
 9 **A. It was --**  
 10 **Q.** Do you remember that testimony?  
 11 **A. It was -- yes.**  
 12 **Q.** My question, then, is if Fawn Foster took  
 13 the stand under oath and told this jury that she  
 14 had spoken to no one about what happened October 8,  
 15 2009, that would be a lie; correct?  
 16 **A. No. Because I'm not --**  
 17 **Q.** You answered it. That's your opinion.  
 18 **Fine.**  
 19 **If Michael Hamilton took the witness**  
 20 **stand and told us that he had not spoke to anyone**  
 21 **about what happened between October 8, 2009, and**  
 22 **the date of his testimony, then that would not be**  
 23 **true; correct?**  
 24 **A. Correct.**  
 25 **Q.** And, of course, the same is true for

1 Amayra Hamilton; correct? Because you spoke with  
 2 her?  
 3 **A. Yeah. I spoke with them.**  
 4 **Q.** You went through the healing process?  
 5 **A. Correct.**  
 6 **Q.** You were talking about your tragedy and  
 7 your life experiences and how much impact this had  
 8 had on your life; correct?  
 9 **A. Correct.**  
 10 **Q.** It was part of the repressed memory that  
 11 came out that allowed you to more accurately  
 12 testify in front of this jury; correct?  
 13 **A. Correct.**  
 14 **Q.** Probably -- strike that.  
 15 **Listen to this statement, Mr. Rock: The**  
 16 **gate opened, and I crawled out. I looked, and I**  
 17 **had seen. I knew it was not my time, but my spirit**  
 18 **will wander as the birds stayed singing. And my**  
 19 **garden will stay in its green trees ringing. I am**  
 20 **here to share my story of love and purpose.**  
 21 **Who is the author of that statement,**  
 22 **Mr. Rock?**  
 23 **A. I am the author of that statement.**  
 24 **Q.** In fact, you're scheduled to make a  
 25 presentation on June 18, 2011, at the Sedona Arts

1 Center about what happened to you on October 8,  
 2 2009; correct?  
 3 **A. No, I'm not.**  
 4 **Q.** Did you cancel it?  
 5 **A. It's canceled. Yes.**  
 6 **Q.** Okay. You were scheduled to make a  
 7 presentation about your experience on June 18,  
 8 along with Debra Martin; correct?  
 9 **A. Yes.**  
 10 **Q.** The fee for that is \$88 with a box lunch,  
 11 77 bucks without it; correct?  
 12 **A. Correct.**  
 13 **Q.** And it's been canceled by you?  
 14 **A. Yes.**  
 15 **Q.** On October 8, 2009, you told the  
 16 detective -- when you were asked, did you render  
 17 aid to anybody. You said no; correct?  
 18 **A. Correct.**  
 19 **Q.** Because your focus was to get out of  
 20 there and get myself resuscitated; correct?  
 21 **A. Correct.**  
 22 **Q.** So it's your testimony, Mr. Rock, that  
 23 when you hear this horrific gurgling sound from  
 24 Kirby Brown, you don't do anything; correct?  
 25 **A. Yes. And that's what I have to live**

1 **with.**  
 2 **Q.** You took care of yourself; correct?  
 3 **A. I took care of myself so I could get out**  
 4 **and resuscitate so I could possibly help somebody**  
 5 **else.**  
 6 **Q.** And you told Detective Parkinson,  
 7 Lieutenant Boelts, and this jury that everyone that  
 8 day was exercising free choice; correct?  
 9 **A. That's what I said.**  
 10 **Q.** That people were free to go in the sweat  
 11 lodge if they chose to; correct?  
 12 **A. They were free to go in. Yes.**  
 13 **Q.** They were free to leave if they wanted  
 14 to; correct?  
 15 **A. Yes. They were free to leave if they**  
 16 **were capable.**  
 17 **Q.** And you told us of words you heard from  
 18 Kirby Brown. And those words were, we can do it.  
 19 We can do it, from Kirby; correct?  
 20 **A. Correct.**  
 21 **Q.** And at no time did you help anyone;  
 22 correct?  
 23 **A. Yeah. And that's why I have the problem**  
 24 **I have.**  
 25 **Q.** Thank you, Mr. Rock.

1 Thank you, Judge.  
 2 THE COURT: Thank you, Counsel.  
 3 Redirect, Ms. Polk?  
 4 MS. POLK: Yes, Your Honor. Thank you.  
 5 Your Honor, counsel has agreed to the  
 6 admission of Exhibit 1070.  
 7 THE COURT: 1070 is admitted.  
 8 (Exhibit 1070 admitted)  
 9 MR. KELLY: Judge, I'd ask the county attorney  
 10 explain the relation the between 1069 and 1070.  
 11 MS. POLK: Your Honor, this is the petition  
 12 with the signed order -- the petition for use  
 13 immunity. The order is already in. This is the  
 14 petition with the order attached.  
 15 THE COURT: The exhibit number again,  
 16 Ms. Polk?  
 17 MS. POLK: This is 1070. 1070.  
 18 THE COURT: 1070 is admitted.  
 19 REDIRECT EXAMINATION  
 20 BY MS. POLK:  
 21 **Q.** Mr. Rock, I'm going to show you what's  
 22 marked as 1070.  
 23 **A. Okay.**  
 24 **Q.** It is a document entitled "Petition for  
 25 Use Immunity," pursuant to A.R.S. Section 13-4064.

1 Have you seen this document before?  
 2 **A. Yes.**  
 3 **Q.** When did you see it?  
 4 **A. I saw it earlier today. My lawyer**  
 5 **brought it into the room I was in, to the Room 222.**  
 6 **Q.** I'm going to put it up on the overhead  
 7 now.  
 8 Do you see the language, the State of  
 9 Arizona, by and through Sheila Sullivan Polk,  
 10 Yavapai County Attorney, and her deputy,  
 11 undersigned, pursuant to the statute request the  
 12 following relief?  
 13 Do you see that?  
 14 **A. Yes.**  
 15 **Q.** And my question, Mr. Rock, is this the  
 16 full agreement entered into between you and the  
 17 State of Arizona for your testimony?  
 18 **A. Yes. That's what I was given.**  
 19 **Q.** Are there any other papers that you were  
 20 given that you don't see here attached to this  
 21 exhibit?  
 22 **A. No. I was only given the top copy.**  
 23 **Q.** Is this the complete agreement that you  
 24 have with the State of Arizona for your testimony?  
 25 **A. Yes.**

1 Q. And were any promises made to you outside  
2 of what is set forth in this agreement?

3 A. No. None.

4 Q. And do you understand, Mr. Rock, because  
5 your testimony today and -- your testimony today  
6 and over the last -- past week seems different than  
7 what you told Detective Parkinson and  
8 Lieutenant Boelts, that the state cannot force you  
9 to testify without giving you some immunity?

10 A. Yes. Correct.

11 MR. KELLY: Your Honor, objection.

12 THE COURT: Sustained.

13 Q. BY MS. POLK: And you do understand,  
14 Mr. Rock, that you can be prosecuted if you lied or  
15 you lie on the witness stand in this proceeding?

16 A. Yes.

17 Q. To the best of your knowledge, is  
18 everything you have testified to and told this jury  
19 truthful and accurate?

20 A. Yes, it is.

21 Q. Why are you willing to give testimony,  
22 Mr. Rock?

23 MR. KELLY: Judge, I believe we need a  
24 sidebar.

25 THE COURT: We can do that. Ladies and

1 gentlemen, please feel free to stretch.

2 Mr. Rock, you as well.

3 (Sidebar conference.)

4 THE COURT: Mr. Kelly.

5 MR. KELLY: Judge, this was the problem that I  
6 anticipated this morning, in that based on the  
7 statements of Mr. Lauenders, the review of the  
8 record, his testimony under oath on November 16,  
9 his testimony Friday and today, and his statements  
10 made to the various police officers, the State of  
11 Arizona is trying to rehabilitate a witness who has  
12 under oath possibly committed perjury and clearly  
13 made false statement -- or, alternative, clearly  
14 made false statement to a police officer.

15 And now we get into a whole different  
16 arena of why the State of Arizona -- it's one thing  
17 to present false testimony. We talked about that.  
18 The United States Supreme Court case of 1957. And  
19 now there is going to be some effort to  
20 rehabilitate when it's clearly on the record what  
21 he said. I think that's a different issue as it  
22 relates to the propriety of that particular line of  
23 questioning.

24 THE COURT: Ms. Polk.

25 MS. POLK: Your Honor, I'm not quite sure the

1 point Mr. Kelly is making. But when he examined  
2 this witness, he said to this witness, you  
3 understand that Ms. Polk will not prosecute you for  
4 anything you say on the witness stand, which is  
5 completely wrong and is not what use immunity is  
6 about. And that's the area I'm addressing.

7 MR. KELLY: That question was objected to and  
8 sustained and rephrased.

9 THE COURT: There is an objection to the last  
10 question. It's overruled. There can be redirect  
11 in this area.

12 Thank you.

13 (End of sidebar conference.)

14 Q. BY MS. POLK: Mr. Rock, why are you  
15 willing to give testimony?

16 A. **Because I feel that I need to tell my  
17 story and my truth and say what happened to the  
18 best of my ability no matter what that means.**

19 Q. I wanted to ask you some brief follow up,  
20 Mr. Rock, about the interview with  
21 Lieutenant Boelts that was played. I guess he was  
22 a sergeant then. That was Exhibit 600. And that  
23 entire interview was played for the jury.

24 Specifically in that interview there was  
25 a reference to Linda Andresano?

1 A. Yes.

2 Q. Do you recall -- do you have a  
3 recollection today of Linda Andresano inside the  
4 sweat lodge?

5 A. Yes. I recall where she was.

6 Q. And what do you recall?

7 A. **When it first started out, she was next  
8 to me. And then she had moved over because people  
9 had come in between us.**

10 Q. Do you have any additional recollections  
11 of her throughout the ceremony?

12 A. **Throughout the sweat lodge ceremony?  
13 Just where she was. She was close to me. And  
14 that's it.**

15 Q. When you left the sweat lodge, do you  
16 know where Linda was?

17 A. No, I don't.

18 Q. And in that interview you made the  
19 statement about Sidney Spencer being hospitalized.  
20 Do you recall that from listening to the interview  
21 a while ago?

22 A. Yes.

23 Q. When did you become aware that Sidney  
24 Spencer had been hospitalized?

25 A. **The night of the sweat lodge event. They**

1 **took her in an ambulance.**

2 **Q.** And do you recall where Sidney Spencer  
3 sat inside the sweat lodge?

4 I'm going to put up Exhibit 414.

5 Do you recall?

6 **A. Yes.**

7 **Q.** Can you show the jury.

8 **A. She was over here somewhere.**

9 **Q.** I'm sorry. Go ahead.

10 **A. She was in that area.**

11 **Q.** And show the jury where you recall Linda  
12 being.

13 **A. Pardon?**

14 **Q.** Where you recall Linda Andresano being.

15 **A. She was over in this area. She started**  
16 **out being here. She was next to me. And then she**  
17 **moved over a little bit.**

18 **Q.** During the two tapes that were played for  
19 the jury, would you agree, Mr. Rock, that your tone  
20 did not sound emotional?

21 **A. Yes.**

22 **Q.** And how would you explain that to the  
23 jury?

24 **A. I was on automatic pilot, just talking**  
25 **and answering questions, being as responsive as I**

1 **could to the person talking to me. I tried to be**  
2 **polite.**

3 **Q.** Do you recall what was going on in your  
4 mind when you were answering the questions?

5 **A. Everything that happened as far as the --**  
6 **where I was at the time in the dining hall,**  
7 **everything that happened with the ambulances and**  
8 **the choppers and the people and going to the**  
9 **hospital and knowing that the people in the dining**  
10 **hall weren't all the people and worrying about who**  
11 **was where and who was sick and who was dying and --**  
12 **yeah. Everything. Everything.**

13 **Q.** Do you recall what your attitude was  
14 towards Mr. Ray when you were interviewed on the  
15 evening of October 8, 2009?

16 **A. I wasn't even thinking about him except**  
17 **for the fact that I was a little annoyed because**  
18 **none of his people came into the dining hall. And**  
19 **I was the only one there. And everybody that was**  
20 **there was looking to me because I was a Dream Team**  
21 **member.**

22 **Q.** What other Dream Team members were in the  
23 dining hall when you were there?

24 **A. I think it was -- I was the first one**  
25 **there, from what I recall. And Jennifer Haley, I**

1 **believe, came and left. And later Christine Jobe**  
2 **and Barb Waters came and left. So I was alone as**  
3 **far as most of the time.**

4 **Q.** And you had testified, I believe it was,  
5 last week, after Mr. Ray's sweat lodge ceremony and  
6 you crawled out and at one point seeing Mr. Ray and  
7 feeling anger.

8 Do you recall that testimony?

9 **A. Yes.**

10 **Q.** When you were interviewed by  
11 Detective Parkinson that evening, were you still  
12 angry?

13 **A. No. I wasn't even thinking of him at**  
14 **that time. I was just so distraught over what had**  
15 **happened and thinking of all the people that were**  
16 **there or weren't there and how they were feeling.**

17 **Q.** And can you tell the jury why you felt  
18 angry at Mr. Ray after you had come out of his  
19 sweat lodge ceremony?

20 **A. In my altered state at that time, I had**  
21 **explained that I looked over at James Shore and**  
22 **said, well, he's dead. And then when I was sitting**  
23 **on that rock and saw James Ray, I was angry because**  
24 **it happened.**

25 **And then when I got up and walked towards**

1 **him, he disappeared. He wasn't in the position**  
2 **that he was still in. And I flopped down in a**  
3 **puddle on a tarp as if I -- another action that was**  
4 **if I was a little kid. It's inappropriate behavior**  
5 **of how I would normally react to these things.**

6 **Q.** And how so?

7 **A. I wouldn't be so, like, oh well. And**  
8 **just couldn't comprehend what I was doing and then**  
9 **what was happening in the context of these people**  
10 **died and -- or James Shore, I felt, was dead. I**  
11 **couldn't believe it happened.**

12 **Q.** Mr. Rock, the interview that you had with  
13 Detective Parkinson on the evening of October 8 was  
14 played for the jury. And Mr. Kelly asked you about  
15 some cheering that was in the background. And you  
16 said you didn't understand that to be cheering.

17 What do you recall about what the jury  
18 heard in the background?

19 **A. That was not cheering, from my memory. I**  
20 **didn't hear that as cheering now. And I do not**  
21 **remember anybody cheering or anybody feeling happy**  
22 **in any way, in that manner.**

23 **Q.** Do you have some of the transcripts still  
24 in front of you Mr. Rock?

25 **A. Yes.**

1 Q. Do you have a transcript of the interview  
2 with Detective Parkinson? And that would be  
3 Exhibit 697.

4 A. Yes.

5 Q. On page 12, lines 13 to 14, the jury  
6 heard you describe when the water would be thrown  
7 on the rocks. And you talked about how it would  
8 wash our way first. What were you referring to  
9 when you said, it would wash our way first?

10 A. **The heat. The heat, the water. The**  
11 **water would create steam. So that would wash over**  
12 **us.**

13 Q. And looking at what's on the overhead,  
14 Exhibit 414, why was it that your way or our way,  
15 as you described -- why did the heat come your way  
16 first?

17 A. **Because James always poured the water on**  
18 **from this direction. And when he poured, it went**  
19 **this way. And, like I said, it splashed on me.**  
20 **That's why I started lifting my legs up. I didn't**  
21 **want that to keep happening every time he did it.**

22 Q. Do you believe that the heat came and the  
23 steam came your way first?

24 A. Yes.

25 Q. As opposed to coming out to other areas

1 in the sweat lodge?

2 A. Yes.

3 Q. Mr. Kelly asked you if your testimony on  
4 November 16, 2010, at the hearing -- actually, he  
5 asked you was your testimony today different than  
6 your earlier testimony.

7 Do you recall that question?

8 A. Yes.

9 Q. When was it, Mr. Rock, that you first  
10 provided to law enforcement a full statement?

11 A. **A full statement would have been, I would**  
12 **say, with Ross Diskin, Detective Diskin, on -- in**  
13 **September, I believe it was, of 2010.**

14 Q. And was that before you testified at the  
15 hearing on November 16, 2010?

16 A. Yes.

17 Q. To the best of your knowledge, did you  
18 testify at that hearing about the things that you  
19 had told Detective Diskin a month earlier or two  
20 months earlier?

21 MR. KELLY: Your Honor, objection.

22 THE WITNESS: Yes.

23 MR. KELLY: I'd ask the answer be stricken.

24 THE COURT: Overruled.

25 MR. KELLY: Judge, it misstates the testimony

1 from November 2010 completely.

2 THE COURT: Overruled.

3 You may ask your next question, Ms. Polk.

4 MS. POLK: Thank you.

5 Q. I'm going to provide to you Exhibit 712,  
6 Mr. Rock. And that's a transcript of the interview  
7 you had with Detective Diskin on September 21st  
8 of 2010.

9 A. Okay.

10 Q. Have you had a chance to review that  
11 transcript before coming here to court?

12 A. Yes.

13 Q. And I wanted to direct your attention to  
14 page 27.

15 A. Okay.

16 Q. During that interview with Ross Diskin,  
17 Detective Diskin, on September 21st, 2010, did you  
18 tell him what you told the jury about Kirby Brown's  
19 breathing?

20 MR. KELLY: Your Honor, objection.

21 THE COURT: Counsel, please approach. You  
22 need to approach.

23 (Sidebar conference.)

24 THE COURT: Go ahead, Mr. Kelly.

25 MR. KELLY: Judge, I've read the referenced

1 paragraph. And what the state is trying to do  
2 right now is corroborate the witness's statement  
3 with a prior consistent statement, which is simply  
4 not permitted. Are we saying that you're more true  
5 because you told Ross Diskin something one time?  
6 That's ludicrous.

7 MS. POLK: Your Honor, that is what I'm  
8 attempting to do. And I believe under  
9 Rule 801(d)(1) that I'm permitted to do that.

10 There has been the suggestion of fabrication,  
11 repressed memory, PTSD. There has been a number of  
12 accusations leveled by Mr. Kelly to this witness.  
13 And pursuant to 801(d)(1), we are allowed to -- I  
14 don't have the rule in front of me. We're allowed  
15 to bring prior consistent statements to rebut this  
16 claim of recent fabrication.

17 THE COURT: I've got the rule, if you like.

18 MR. KELLY: Judge, I did not bring that  
19 evidence into this courtroom. The witness offered  
20 it as an explanation as to his inconsistent  
21 statements.

22 MS. POLK: I do believe this rule is right on  
23 point, Your Honor. It says, the prior statement by  
24 the witness/declarant testifies at the trial or  
25 hearing is subject to cross-examination concerning

1 the statement and the statement is consistent with  
2 the declarant's testimony and is offered to rebut  
3 an express or implied charge against the declarant  
4 of recent fabrication or improper influence or  
5 motive.

6 MR. KELLY: Your Honor, let me point out the  
7 important distinction is that for the hour before  
8 my cross-examination began, the State of Arizona  
9 asked the questions as to why were the statements  
10 inconsistent.

11 This is beyond the scope of cross. There  
12 hasn't been any reference to the September 21  
13 statement. And she attempted to draw the sting  
14 from cross-examination by pointing out the reasons  
15 the statements were inconsistent. And that's why I  
16 parroted every excuse that he articulated. And he  
17 added one additional one under cross-examination.  
18 After the post-traumatic stress syndrome,  
19 everything else was brought out on direct. So this  
20 is not a proper use of an 801(d)(1).

21 And again, Judge, the real issue here is  
22 can the State of Arizona obtain a conviction on  
23 false testimony? And the record speaks for itself  
24 in terms of the statements made under oath by this  
25 witness.

1 And now to try to restore the  
2 credibility, it is a more serious problem relating  
3 to the propriety of the prosecutor in that regard.

4 THE COURT: Okay, Ms. Polk.

5 MS. POLK: Your Honor, in my direct I did not  
6 cover the statements, actual statements, made when  
7 interviewed by Detective Diskin or the actual  
8 statements made at the 404(b) hearing. And  
9 801(d)(1) is exactly on point, the opportunity to  
10 provide a consistent statement when there has been  
11 this accusation of fabrication or improper motive.

12 And if I can just add one thing, Your  
13 Honor.

14 THE COURT: Yes. Go ahead.

15 MS. POLK: Mr. Kelly played the entire taped  
16 interviews of this witness from October 8 and then  
17 again from October 29 of 2009. The entire  
18 interviews were played and then these suggestions  
19 to the jury of fabrication or improper motive. And  
20 it's entirely proper under 801(d)(1) to bring in  
21 consistent statements.

22 MR. KELLY: Judge, I believe 801(d)(1) states  
23 the fabrication has to be before, not after.

24 THE COURT: It's in the case law, Mr. Kelly.  
25 The case law says that in order to bring in a prior

1 consistent statement, the statement has to be made  
2 prior to the time there would be a motive to  
3 fabricate.

4 This is a really complex issue the way  
5 this has come up.

6 Ms. Polk, you did ask one question to the  
7 effect there was a September interview and there  
8 was consistent testimony. I overruled that  
9 objection. You recall that.

10 Because I think in the context,  
11 Mr. Kelly, you had asked some questions indicating  
12 there was never anything all the way through  
13 November 10. You know, without the transcript, I  
14 can't say.

15 But the case law is clear that the -- in  
16 order to not be hearsay, it has to be before there  
17 is a motive, it's made before there is a motive to  
18 fabricate. This is clearly after there would be a  
19 motive. Technically it would not qualify under  
20 that rule.

21 MS. POLK: Your Honor, if I can be heard on  
22 that. Mr. Kelly suggested that this witness has --  
23 that today his memory is bad. He is suggesting  
24 today that his memory is bad due to the PTSD. And  
25 so prior consistent statements prior to today would

1 be admissible under this rule.

2 And in addition the Court is correctly  
3 recalling a question by Mr. Kelly suggesting that  
4 statements made up until today's hearing -- that  
5 this witness had not made statements up until this  
6 hearing today along the lines of which he  
7 testified, which is inaccurate. Because we know  
8 that the full statement was made in September, and  
9 then a statement was made at the hearing.

10 I would like to go through those, both of  
11 those, the interview and then the hearing, to  
12 establish whether there are some consistent  
13 statements because Mr. Kelly has alleged that today  
14 he has a bad memory due to the PTSD.

15 THE COURT: It's just really unusual. That is  
16 a legitimate purpose to some extent, Ms. Polk. To  
17 just go through every point again -- and it really  
18 is. It's just this odd hearsay that --  
19 technically, it's hearsay. But it's been  
20 interjected because of the questioning of the  
21 memory, because of the suggestion. And I do recall  
22 it, the suggestion that it's never been stated  
23 before. And that makes it relevant.

24 MS. POLK: And I'm not going to go through  
25 every point, Your Honor. I just want to go through

1 the statement about hearing Kirby Brown gurgling  
2 and then how Mr. Ray responded. Because this  
3 witness made those statement both in September and  
4 then at the hearing in November. Those are the  
5 only areas I want to cover. But it's appropriate  
6 redirect.

7 THE COURT: And I agree on that.

8 Mr. Kelly, go ahead.

9 MR. KELLY: Judge, I'd also emphasize that  
10 when a question is beyond the scope of cross,  
11 because I made -- the only reference to this  
12 specific material facts that I made during my  
13 cross-examination as to this witness's testimony  
14 was the sound of Kirby Brown gurgling, some  
15 statement that someone needs help and Mr. Ray's  
16 response, period.

17 Now, prior to that I did impeach him on  
18 his October 8 and October 29 statements  
19 extensively. But they were made prior to this  
20 September 21, 2010, statement. And I made no  
21 reference to that at all. What I brought out was  
22 he was residing at Angel Valley.

23 THE COURT: Well, Ms. Polk is going to  
24 indicate the date and, I think, wanted to address  
25 one of the particular areas you mentioned. And

1 it's going to be in the fashion it's not going to  
2 be anything new. It's going to let the jury know  
3 that this is when it was mentioned. And I'm going  
4 to allow that.

5 MS. POLK: Thank you.

6 (End of sidebar conference.)

7 THE COURT: Ms. Polk.

8 MS. POLK: Thank you, Your Honor.

9 Q. Mr. Rock, when you were interviewed by  
10 Detective Diskin on September 21st of 2010, did you  
11 tell him about your --

12 MR. KELLY: Objection, Your Honor. Leading.

13 THE COURT: Overruled.

14 You may complete the question, in any  
15 event.

16 Q. BY MS. POLK: Did you recall -- do you  
17 recall whether you told Detective Diskin what you  
18 testified to this jury about hearing the breathing  
19 of Kirby Brown?

20 A. Yes, I do.

21 Q. And if I can direct your attention to --

22 MR. KELLY: Your Honor, objection. Asked and  
23 answered.

24 THE COURT: Overruled.

25 Q. BY MS. POLK: Do you recall specifically

1 what you told Detective Diskin at that time?

2 MR. KELLY: Your Honor, objection.

3 Cumulative.

4 THE COURT: Overruled.

5 Q. BY MS. POLK: Do you recall what you told  
6 Detective Diskin in September of 2010 about Kirby  
7 Brown's breathing inside the sweat lodge?

8 A. Yes, I do.

9 Q. Will you tell the jury.

10 A. When I was inside the sweat lodge and I  
11 was laying there on the ground between the sixth  
12 and seventh round, I heard Kirby Brown gurgling her  
13 last breath, is what I thought. And I heard James  
14 Ray say -- or I heard somebody say that she was in  
15 trouble. Kirby is in trouble. She needs to get  
16 out.

17 And I heard James Ray say, close the  
18 gate. We'll deal with that after this round.

19 Q. And, Mr. Rock, are you able to find in  
20 the transcript of your interview with  
21 Detective Diskin where you told Detective Diskin  
22 that?

23 MR. KELLY: Your Honor, objection.

24 THE COURT: Overruled.

25 THE WITNESS: Am I able to find it?

1 Q. BY MS. POLK: Yes. Can you find it in  
2 the transcript?

3 A. Yes. It starts on page 26, on No. 28,  
4 goes to page 27 through No. 10.

5 Q. And can you read to the jury what you  
6 told Detective Diskin --

7 MR. KELLY: Your Honor, objection.

8 THE COURT: Sustained.

9 Q. BY MS. POLK: Do you recall whether --  
10 when you were interviewed by Detective Diskin,  
11 whether you told him the response by Mr. Ray to  
12 that information?

13 MR. KELLY: Your Honor, objection.

14 Cumulative. It's been asked and answered.

15 THE COURT: That is a question that calls for  
16 a yes or no response.

17 If you're able to answer that, Mr. Rock.

18 THE WITNESS: Could you repeat the question.

19 Q. BY MS. POLK: When you were interviewed  
20 by Detective Diskin on September 21st, 2010, did  
21 you tell him what you told this jury about how  
22 Mr. Ray responded when somebody called out Kirby's  
23 in trouble? She need to get out?

24 A. Yes.

25 MR. KELLY: Your Honor, objection.

1 THE COURT: Overruled.  
 2 You may answer that.  
 3 THE WITNESS: Yes.  
 4 Q. BY MS. POLK: Do you recall what you told  
 5 Detective Diskin back on September 2010 about how  
 6 Mr. Ray responded?  
 7 A. Yes.  
 8 MR. KELLY: Your Honor, objection.  
 9 THE COURT: Overruled. That answer stands.  
 10 Q. BY MS. POLK: Will you tell the jury what  
 11 you told Detective Diskin back in September of last  
 12 year.  
 13 MR. KELLY: Your Honor, objection.  
 14 Cumulative.  
 15 THE COURT: Sustained.  
 16 Q. BY MS. POLK: Mr. Rock, when you heard  
 17 the statement about Kirby being in trouble, was  
 18 there other -- how loud or -- how loud was it in  
 19 the sweat lodge at the time you heard that  
 20 statement?  
 21 A. The gurgling?  
 22 Q. Yes.  
 23 A. Or the statement?  
 24 Q. Well, let's talk about the gurgling  
 25 first, Kirby's breathing first.

1 A. That was the only noise that I heard was  
 2 her.  
 3 Q. And do you recall whether you told that  
 4 to Detective Diskin when you were interviewed by  
 5 him last September?  
 6 A. Yes.  
 7 MR. KELLY: Your Honor, objection to this line  
 8 of questioning.  
 9 THE COURT: Overruled.  
 10 You may answer that.  
 11 THE WITNESS: Yes.  
 12 Q. BY MS. POLK: And how loud was it when  
 13 somebody called out, Kirby's in trouble? She needs  
 14 to get out?  
 15 A. It was the same. There was no noise. So  
 16 it was very -- you could hear it very good.  
 17 Q. And when Mr. Ray responded, how loud was  
 18 it?  
 19 A. It was exactly the same for all three  
 20 statements.  
 21 Q. Do you recall, Mr. Rock, when you were  
 22 interviewed by Detective Diskin last September,  
 23 whether you told him about what happened when you  
 24 came outside the sweat lodge and saw James Shore?  
 25 MR. KELLY: Your Honor, objection.

1 THE COURT: Overruled.  
 2 You may answer that.  
 3 THE WITNESS: Yes.  
 4 Q. BY MS. POLK: What did you tell  
 5 Detective Diskin last September?  
 6 MR. KELLY: Your Honor, objection.  
 7 THE COURT: Sustained.  
 8 Q. BY MS. POLK: Did you tell  
 9 Detective Diskin the same thing that you testified  
 10 to this jury in the trial?  
 11 MR. KELLY: Your Honor, objection.  
 12 THE COURT: Go ahead and finish your question.  
 13 Q. BY MS. POLK: Did you tell  
 14 Detective Diskin the same thing that you told the  
 15 jury in this trial about your reaction after the  
 16 sweat lodge ceremony was over and you saw James  
 17 Shore?  
 18 MR. KELLY: Your Honor, objection. Leading.  
 19 THE COURT: Overruled.  
 20 THE WITNESS: Yes.  
 21 Q. BY MS. POLK: Mr. Rock, when you  
 22 testified at the hearing on November 11 and  
 23 November 16 of 2010, do you recall whether you  
 24 testified then about what you told this jury about  
 25 hearing Kirby Brown breathing?

1 A. No. I don't recall. I'd have to look.  
 2 Q. If you had an opportunity to look at a  
 3 transcript of that hearing, would that refresh your  
 4 recollection?  
 5 A. Yes.  
 6 MR. KELLY: Your Honor, I'm going to object.  
 7 THE COURT: Overruled.  
 8 Q. BY MS. POLK: I'm going to provide you  
 9 with a copy. It's Exhibit 1071, Mr. Rock. As you  
 10 can see, it's a transcript of a proceeding. And  
 11 the date on the front is November 10 --  
 12 MR. KELLY: Objection. The prosecutor is  
 13 testifying.  
 14 THE COURT: Sustained.  
 15 MS. POLK: Just explain what the document is  
 16 that I've given to the witness.  
 17 THE COURT: Mr. Kelly, you have that.  
 18 Proceed.  
 19 Q. BY MS. POLK: Would you take a look at  
 20 pages 245 to 246.  
 21 A. Okay.  
 22 Q. Does that refresh your recollection?  
 23 A. Yes.  
 24 Q. Mr. Rock, can you tell the jury whether,  
 25 when you testified at the hearing in November

1 of 2010 in this courtroom, you testified about your  
2 recollection, about Kirby's breathing, the  
3 statement that she's needs to get out, and how  
4 Mr. Ray responded?

5 MR. KELLY: Your Honor, objection as leading.

6 THE COURT: Overruled.

7 THE WITNESS: Yes.

8 Q. BY MS. POLK: Yes, you did?

9 A. Yes.

10 Q. Do you recall, Mr. Rock, at that same  
11 hearing whether you testified about hearing Mr. Ray  
12 make statements about how no one has ever died in  
13 his sweat lodge?

14 A. Yes.

15 MR. KELLY: Your Honor, objection. Beyond the  
16 scope of cross.

17 THE COURT: Sustained. The answer is  
18 stricken.

19 Q. BY MS. POLK: You testified about  
20 repressed memory and PTSD, Mr. Rock. Can you tell  
21 the jury why -- if you know, why you have repressed  
22 your memory of what you heard with respect to Kirby  
23 Brown inside the sweat lodge?

24 A. **Because when I was laying there and**  
25 **couldn't get up and I heard her do that, it just --**

1 **it tore my heart out. And it's -- it haunts me**  
2 **that I was a part of that in any way. And it just**  
3 **tears me up that she died and there was nothing I**  
4 **could do.**

5 Q. Mr. Kelly asked you about when you went  
6 to Angel Valley and the conversations you had with  
7 the Hamiltons and specifically when Mrs. Hamilton  
8 asked you if you wanted to talk to the detective.

9 Do you recall that question?

10 A. Yes.

11 Q. Will you tell the jury why you wanted to  
12 talk to the detective.

13 A. **Because I had a lot to tell him about**  
14 **what I had remembered. And I thought that it was**  
15 **important that I speak my truth and tell the**  
16 **detective everything that I could possibly remember**  
17 **about what happened that day.**

18 Q. You made the statement in response to a  
19 question from Mr. Kelly that my time at  
20 Angel Valley helped me remember and accept the  
21 things that I remember.

22 What do you mean by that, remember and  
23 accept?

24 A. **It was, first of all, to remember things**  
25 **that are so tragic and so horrible that I've never**

1 **seen in my life before. And then to accept myself**  
2 **for being a part of that and the guilt that I felt**  
3 **when things happened. Because I was there for the**  
4 **people and I was in that sweat lodge for the**  
5 **people, and I just couldn't do anything to help**  
6 **them.**

7 Q. You testified that your memory was  
8 facilitated by conversations with the Hamiltons.  
9 How was it facilitated by conversations with the  
10 Hamiltons?

11 A. **My time in Angel Valley I would do**  
12 **different things to -- creative things to remember,**  
13 **to make myself feel better. It was journaling and**  
14 **that type of thing. And it was healing through**  
15 **creative expressions and creative writing.**

16 **And so when I would do those things at**  
17 **Angel Valley, then I would talk to them about it**  
18 **and say my feelings about it, and they would say**  
19 **theirs. It was a sharing.**

20 Q. Have you ever had a conversation where  
21 anybody told you what they heard inside the sweat  
22 lodge?

23 A. **No. Not to my -- no.**

24 Q. Go ahead.

25 A. **Just my conversation -- what I'm thinking**

1 **of is Dawn Gordon and her saying some different**  
2 **things that happened. And I did give that -- say**  
3 **that, I believe, in October of '08 -- of '09.**

4 Q. When did you have a conversation with  
5 Dawn Gordon?

6 A. **In the dining hall.**

7 Q. On October 8 of 2009?

8 A. **Yes.**

9 Q. Have you ever talked to Dawn Gordon  
10 since?

11 A. **No.**

12 Q. And who was Dawn Gordon?

13 A. **She was the one that was laying right**  
14 **next to me in the sweat lodge, and she was in this**  
15 **position over here.**

16 Q. Do you recall what the conversation with  
17 Dawn Gordon was about?

18 A. **Just what I testified -- well, the**  
19 **statement I made to Detective Parkinson.**

20 Q. That the jury heard on the tape?

21 A. **Yes.**

22 Q. You had testified that you had spoken to  
23 someone named Melissa and someone named Lara  
24 Prieve. Do you recall Melissa's last name?

25 A. **No, I don't.**

1 Q. Do you recall when it was that you talked  
2 to Melissa?

3 A. **It had to be -- it was probably in**  
4 **November of -- it had to be the day of the sweat**  
5 **lodge. And it was also in November of 2009.**

6 Q. And did you talk to Melissa specifically  
7 about your memories of inside the sweat lodge?

8 A. **No, I did not.**

9 Q. And the same question for Laura. Did you  
10 talk to her about your memories of inside the sweat  
11 lodge?

12 A. **No, I haven't.**

13 Q. And have either of those two women told  
14 you what they remember from inside the sweat lodge?

15 A. **Only that Melissa said that --**

16 MR. KELLY: Your Honor, objection. Hearsay.

17 THE COURT: Sustained.

18 Q. BY MS. POLK: Without telling us, then,  
19 what Melissa said, did what she said affect your  
20 memory?

21 A. **Yes.**

22 Q. And how so?

23 A. **It affected my memory because of what she**  
24 **did is what caused James Ray to say that that's --**

25 MR. KELLY: Your Honor, objection.

1 THE COURT: Sustained.

2 Q. BY MS. POLK: Does this pertain to the  
3 lifting of the flap?

4 A. **Yes.**

5 Q. And does it pertain in any way to your  
6 testimony about your hearing Kirby Brown's  
7 breathing?

8 A. **No.**

9 Q. Do you know what a warrior group is?

10 A. **Yes.**

11 MR. KELLY: Your Honor, objection. Beyond the  
12 scope.

13 THE COURT: Sustained.

14 MS. POLK: Can I ask if he has been a part of  
15 warrior group since Spiritual Warrior 2009,  
16 Your Honor?

17 THE COURT: Go ahead and phrase a question,  
18 Ms. Polk.

19 Q. BY MS. POLK: Have you been a member of a  
20 warrior group since the sweat lodge in 2009?

21 A. **Yes. We had a warrior group right**  
22 **afterwards and --**

23 Q. Without telling me what was said, have  
24 you been part of any other warrior group since  
25 then?

1 A. **No.**

2 Q. You were asked some questions -- you were  
3 shown Exhibit 189. It was called the "Dream Team  
4 Expectations." And you talked about what you  
5 understood your responsibility inside the sweat  
6 lodge to be. Did Mr. Ray ever talk to you or the  
7 Dream Team members about your duties inside the  
8 sweat lodge?

9 A. **Only during the sweat lodge did he really**  
10 **confirm my position.**

11 Q. How so?

12 A. **He started his sweat lodge. And one of**  
13 **the things he started doing was going around to the**  
14 **different positions and saying that this person was**  
15 **the keeper of the west or the keeper of. And he**  
16 **said that I was the keeper of the north and -- you**  
17 **know -- different things like that. So that was**  
18 **identifying me as the keeper of the north from him.**

19 Q. And who told you to hold space inside the  
20 sweat lodge?

21 A. **Megan Fredrickson.**

22 Q. Mr. Rock, you had testified on direct  
23 examination about the ceremony following what  
24 happened on October 8, 2009. And then Mr. Kelly  
25 asked you about an anniversary that was in 2010.

1 Did you attend that anniversary ceremony?

2 A. **Yes.**

3 Q. And did the Hamiltons make you agree not  
4 to sue them before you could participate in the  
5 anniversary ceremony?

6 A. **No.**

7 Q. You were asked about a -- an upcoming  
8 event for June 18, 2001, that has been canceled.  
9 What was that event supposed to be?

10 A. **It was an event to help me with my**  
11 **healing process.**

12 Q. And how so?

13 A. **Because of working with Debra Martin in**  
14 **my healing process. She had experienced a near**  
15 **death experience, and I felt at that time that I**  
16 **did too.**

17 Q. Who was putting on the event? Were you  
18 putting on the event or somebody else?

19 A. **Debra Martin and I.**

20 Q. And why did you cancel that?

21 A. **Because I no longer had any -- nobody was**  
22 **interested, and there was no point in going**  
23 **further.**

24 Q. And then Mr. Kelly asked you a statement  
25 that you made in an interview with KPHO. Forgiving

1 myself for not having the strength and the wisdom  
2 to change the events and the outcome.

3 Did you make that statement?

4 **A. Yes.**

5 **Q.** What did you mean by that statement?

6 **A. Because I hold myself accountable and  
7 responsible for my part in what happened. And I  
8 felt very guilty for being -- allowing myself to  
9 have James Ray use me --**

10 MR. KELLY: Your Honor, objection. That last  
11 part.

12 THE COURT: Sustained.

13 **Q.** BY MS. POLK: Why do you hold yourself  
14 accountable, Mr. Rock?

15 **A. Because I have a conscience. And once I  
16 fully remembered everything I didn't do, it became  
17 so extremely difficult to forgive myself for that.**

18 **Q.** And has your PTSD affected your ability  
19 to give truthful testimony in this trial?

20 MR. KELLY: Your Honor, objection. Lack of  
21 foundation.

22 THE COURT: Sustained.

23 **Q.** BY MS. POLK: You were asked questions by  
24 Mr. Kelly about your PTSD. Does it affect your  
25 memory?

1 MR. KELLY: Your Honor, again, objection.  
2 Lack of foundation. He's not a medical expert.

3 THE COURT: Sustained.

4 **Q.** BY MS. POLK: And, finally, Mr. Rock, you  
5 agreed that you had made the statement that there  
6 would have been more deaths inside the sweat lodge  
7 if you didn't lift the tarp, lift the flap.

8 What do you mean by that?

9 **A. What I mean by that is that Tess Wong was  
10 close to me, and Sean Ronan was right next to me,  
11 and Dawn Gordon were right next to me. And when I  
12 started realizing exactly what I did do, I felt  
13 that that contributed to helping people stay alive.  
14 And that's part of my healing and part of forgiving  
15 myself is to say at least you did something.  
16 Because James Ray did nothing.**

17 MR. KELLY: Your Honor, objection. Ask the  
18 last portion be stricken.

19 THE COURT: Sustained. And the last portion  
20 of that answer is stricken.

21 **Q.** BY MS. POLK: Thank you, Mr. Rock.

22 Thank you, Your Honor.

23 THE COURT: Thank you, Counsel. It's --

24 Are there any jury questions? Are there  
25 any questions?

1 THE BAILIFF: No.

2 THE COURT: Mr. Rock, you will be excused at  
3 this time temporarily anyway. It's possible that  
4 you could be recalled. And because of that you  
5 need to continue to follow that rule of exclusion,  
6 not attempt to communicate with any other witness  
7 in any way about the case or your testimony. You  
8 can talk to the lawyers as long as other witnesses  
9 are not present.

10 If you keep your seat for just a minute.

11 I'm going to excuse the jury and everyone  
12 else for the evening recess.

13 Ladies and gentlemen, we will take the  
14 recess at this time. Remember the admonition.  
15 Follow the admonition, of course. And please be  
16 reassembled --

17 MS. POLK: Your Honor, could we approach?

18 THE COURT: It will be at the regular time.

19 (Sidebar conference.)

20 MS. POLK: Would it be possible to have the  
21 jury come early? We have a witness, and she's  
22 supposed to catch the shuttle at 12:45 tomorrow.  
23 That's Kim Brinkley.

24 THE COURT: You want to start at 8:30? We can  
25 do that.

1 (End of sidebar conference.)

2 THE COURT: Ladies and gentlemen, bench  
3 conferences about scheduling.

4 In order to work with witnesses, I want  
5 to start at 8:30 tomorrow to get a witness on  
6 early. So please be here a few minutes before  
7 that. I'd like to start right at 8:30. Remember  
8 the admonition. And I'll see you tomorrow morning.

9 Thank you.

10 (The proceedings concluded.)

1 STATE OF ARIZONA     )  
2 COUNTY OF YAVAPAI    )     ss: REPORTER'S CERTIFICATE

3

4           I, Mina G. Hunt, do hereby certify that I  
5 am a Certified Reporter within the State of Arizona  
6 and Certified Shorthand Reporter in California.

7           I further certify that these proceedings  
8 were taken in shorthand by me at the time and place  
9 herein set forth, and were thereafter reduced to  
10 typewritten form, and that the foregoing  
11 constitutes a true and correct transcript.

12           I further certify that I am not related  
13 to, employed by, nor of counsel for any of the  
14 parties or attorneys herein, nor otherwise  
15 interested in the result of the within action.

16           In witness whereof, I have affixed my  
17 signature this 6th day of June, 2011.

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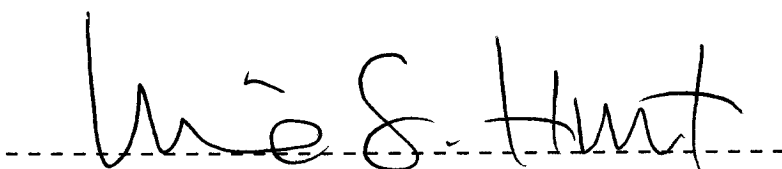
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15 interested in the result of the within action.

16 In witness whereof, I have affixed my  
17 signature this 6th day of June, 2011.

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